

## Foundations

# International Legal Standards

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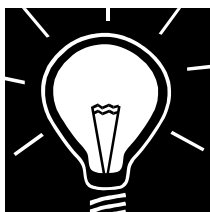
UNICEF and the OHCHR have participated in the development of sections of these Resource Packs, in accordance with the principles and policies of their missions and within the scope of their respective mandates.

Particular recognition is given to the four independent consultants who have helped in developing the training approach and materials, namely Bruce Britton, Peter Firkin, Maureen O'Flynn and David Tolfree.

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### Introduction

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Facilitators who have not recently trained or worked in the area covered by this Resource Pack, should read carefully through the various Topics, Overheads, Exercises, and Handouts before starting to plan their training activity. Please note when using these materials that they are to be used in conjunction with stated policy (they do not replace it) and aim to stimulate learning and discussion.

International Legal Standards is an important but technical and difficult subject area to cover. Try to be as creative as you can in getting over the material but recognise that there may be limitations to how participatory you can be!

### **INTRODUCTION**

Children share protected universal human rights with all other persons but, in addition, because of their dependence, vulnerability and developmental needs, they also have certain additional rights. This Resource Pack outlines the legal foundations for the protection of refugee and displaced children, taking as its starting point the State's primary responsibility for protecting the rights of all persons within its territory. The protection of refugee and displaced children has its roots in international human rights, refugee and humanitarian law. These sources provide the framework for a set of basic minimum standards for children; a legal framework which can assist those who work on behalf of refugee and displaced children.

Care must be taken to ensure that the special needs and rights of refugee children and adolescents are perceived, understood and attended to by those who seek to protect and assist them.

### **KEY CONCEPTS**

1. The legal basis for prioritised action on behalf of children, are well established in international law.
2. The Convention on the Rights of the Child (CRC) provides a comprehensive code of rights which offers the highest standards of protection and assistance for children of any international instrument.
3. The issue of legal status of children is particularly important and has very important implications for ensuring birth registration.
4. As a matter of principle, children should not be detained and there are a number of special measures to protect children from unlawful or arbitrary detention.

### Action for the Rights of Children (ARC)

5. Refugee and displaced children are particularly at risk from many different types of abuse and exploitation, including child labour and sexual exploitation. Their rights to protection are established through the CRC and other international instruments.
6. The maintenance of family unity and the reunification of families has been established as a priority in international law.
7. Education is recognised as a universal human right which is established through a wide range of international and regional instruments.
8. The CRC establishes the right to the highest attainable standard of health for children.
9. The civil rights and freedoms established under the CRC apply equally to all children, who should be provided with opportunities to express their views in any matter affecting them and encouraged to participate in the activities of the community.
10. The CRC and other instruments provide the right to specific protection for children in situations of armed conflict.

### **THE IMPORTANCE OF THE CRC AND OTHER INSTRUMENTS**

All but two countries (the USA and Somalia are the exceptions) are parties to the Convention on the Rights of the Child (CRC). As such it can be treated as almost universally applicable. It is legally binding on every government which is a party to it and applies to all children within the jurisdiction of each State, not only to those who are nationals of that State. Indeed, the principle of non-discrimination is stated strongly in Article 2(1) and certainly covers refugee and displaced children including adolescents.

The CRC defines a “child” as everyone under 18 years of age “unless, under the law applicable to the child, majority is attained earlier” (Article 1). For normal purposes this means that it can be applied to everyone up to 18, unless it is demonstrated that they are an adult under the applicable national law for all purposes or for this specific purpose. In any case, the “scheme” of the CRC suggests that this exception should be interpreted as an empowering one, in other words that under-18s can claim the benefits of adulthood if granted by national law while still being able to claim the protection of the CRC.

### **STRUCTURE OF THE RESOURCE PACK**

This Resource Pack outlines the legal foundations for protection of refugee and displaced children, taking as its starting point the State's responsibility for protecting the human rights of all persons within its territory. The Resource Pack examines the guiding legal principles that provide the basis for prioritised action on behalf of refugee and displaced children.

Provisions of the Convention on the Rights of the Child, and other international instruments, are discussed with a view to explaining and underscoring the legal foundation in relation to issues affecting refugee and displaced children that are covered in other Resource Packs, and to complement the focus of putting into operation a rights based approach.

### Action for the Rights of Children (ARC)

The Resource Pack is divided into a number of topics which introduce the legal and policy framework for understanding children's rights. Topics one and two offer a general introduction to this framework and to the Convention on the Rights of the Child. The remaining Topics provide an introduction to specific issues as they affect refugee and displaced children. Cross-references to other relevant ARC Resource Packs are made throughout.

**Topic 1** outlines the legal framework for the protection of refugee and displaced children which has its roots in international human rights, refugee and humanitarian law.

**Topic 2** introduces the Convention on the Rights of the Child within the legal framework and elaborates its relevance to refugee and displaced children.

**Topic 3** examines issues related to the legal status of an individual child including the importance of birth registration and acquisition of nationality and refugee status.

**Topic 4** looks at the detention of children and the legal framework governing this "measure of last resort".

**Topic 5** emphasises the special significance that International Law places on the principle of family unity, and its implications for separated children.

**Topic 6** examines the provisions in a range of instruments guaranteeing access to both education and health services.

**Topic 7** is a review of the legal provisions that protect children and adolescents from harmful employment, sexual exploitation, abuse and violence, as well as against trafficking, sale and abduction.

**Topic 8** focuses on the protection of children from military recruitment and protection from landmines.

Participatory exercises, overheads and handouts are provided. Facilitators are strongly recommended to develop regional or country specific materials such as case studies, in order to make the training even more relevant.

## GLOSSARY

A number of technical, legal terms are introduced in this Resource Pack. These terms are explained in the following glossary:

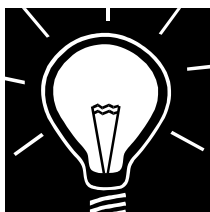
Ad hoc	(Latin: for this purpose). For a specific purpose. An <i>ad hoc</i> committee, for example, is created with a unique and specific purpose or task and once it has studied and reports on the matter, it stands disbanded.
Alien	A resident born in or belonging to another country who has not acquired citizenship by naturalization (distinguished from <i>citizen</i> ); a foreigner.
Asylum	Refuge granted to an alien by a sovereign State on its own territory, by reason of the authorities in that person's home State persecuting that person or failing to protect him from persecution.
Binding	Having power to bind or oblige; obligatory: a <i>binding promise</i> .
De facto	(Latin: "in fact.") in reality, existing.  A condition or situation treated as standard or official, even if not explicitly stated. Actually existing, esp. when without lawful authority (distinguished from <i>de jure</i> ).  A <i>de facto</i> government is one which has seized power by force or in any other unconstitutional method and governs in spite of the existence of a <i>de jure</i> government.
De jure	(Latin: "by right" or "by law.") according to law.  Latin: "of the law." The term has come to describe a total adherence of the law. For example, a <i>de jure</i> government is one which has been created in respect of constitutional law and is in all ways legitimate even though a <i>de facto</i> government may be in control.
Derogate	To take away; detract. To deviate from a standard or expectation; go astray.
Detention	Maintenance of a person in custody or confinement.
Instruments	A formal legal document.
Inter alia	(Latin: "among other things", "for example" or "including").
Internally Displaced Person (IDP)	Persons who have been forced to flee their homes suddenly or unexpectedly in large numbers, as a result of armed conflict, internal strife, systematic violations of human rights or natural or man-made disasters; and who have not crossed an internationally recognised State border.
Intern	To restrict to or confine within prescribed limits, as prisoners of war, enemy aliens, or combat troops who take refuge in a neutral country.

Action for the Rights of Children (ARC)

Internee	A person who is or has been interned.
Internment	Confinement within narrow limits.  Detention of the nationals or property of an enemy or a belligerent. The practice of detaining persons considered dangerous during a war is often called internment, even though they may not be enemy nationals.
jus sanguini	The principle that the country of nationality of a child is that of the country of nationality of the parents
jus soli	The principle that the country of citizenship of a child is determined by its country of birth
Non-refoulement	Principle of international law which requires that no State shall return a refugee in any manner to a country where his or her life or freedom may be endangered. The principle also encompasses non-rejection at the frontier.
Prima facie	(Latin: at first appearance). At first view, before investigation. Law-makers will often use this device to establish that if a certain set of facts are proven, then another fact is established prima facie.
Provisions	A clause in a legal instrument, a law, etc., providing for a particular matter; stipulation; proviso.
Quasi-judicial	Exercising powers or functions that resemble those of a court or a judge: <i>a quasi-judicial agency</i> .
Refugee	A refugee is a person who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership in a particular social group or political opinion, is outside the country of his nationality, and is unable to, or, owing to such fear, is unwilling to avail himself of the protection of that country.
Reservation	An exception or qualification made expressly or tacitly: <i>to accept something, but with inner reservations</i> .  (a) A clause in an instrument by which some new thing is reserved out of the thing granted, (b) A proviso.
Treaty Signature, Ratification and Accession	<b>Signature</b> constitutes a preliminary and general endorsement of a treaty by a country. It is not a legally binding step.  The country follows up with <b>ratification</b> when all procedures required by domestic law have been fulfilled.  Countries that have not signed become States Parties through <b>accession</b> .

## International Legal Standards

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### Topic 1

## The Legal Framework for Child Protection

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### KEY LEARNING POINTS

- *The legal basis for prioritised action on behalf of children, is well established in international law.*
- *International refugee, human rights and humanitarian law, together with regional and national law, constitute the broad framework for the protection of refugee and displaced children.*
- *Humanitarian workers should rely on this framework in their day-to-day work of protecting refugee and displaced children including adolescents.*

A fundamental element of child protection is the recognition that States have the primary responsibility of protecting the human rights of all persons within their territories. Children share protected universal human rights with all other persons but, in addition, because of their dependence, vulnerability and developmental needs, they also have certain additional rights.

The legal basis for prioritised action on behalf of children, including refugee and displaced children, are well established in international law.

Familiarity with international law is important because it outlines the obligations of a country in protecting refugee and displaced children. It also provides the framework within which those who work on behalf of refugee and displaced children should operate.

### INTERNATIONAL LAW

As a starting point it would be useful to consider the nature of a country's international obligations to protect refugees and displaced persons. Generally, they arise from customary international law, treaties, non-binding instruments and regional instruments.

#### ***Customary international law***

Basically, customary international law arises out of universal acceptance and consistent practice by countries with respect to a rule of law. Some of the guarantees and protection found in international instruments have become part of customary international law. This means that such rules can be invoked to protect refugees and displaced persons in a country regardless of whether it has ratified a treaty that contains that specific right or guarantee. For example, all children are protected against slavery and the slave trade, torture or other cruel, inhuman or



degrading treatment or punishment, and racial discrimination and prolonged arbitrary detention.

In addition, the provisions relating to children in Protocol I and Protocol II of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949, have gained wide acceptance. It has been argued that they have acquired the status of customary international law, binding even dissident groups in cases of non-international conflicts.

### ***Treaty law***

A treaty is legally binding on those States that have consented to be bound by its provisions – in other words, States that have ratified and become party to the treaty. Treaties are also commonly referred to as Conventions, Covenants and Protocols.

Three bodies of treaty law, international human rights, refugee and humanitarian law, form the basis of protection for refugee and displaced children, and should be considered as complementary to each other. An analogy is to consider them as three rooms in one house: three distinct components but integral to the overall structure. All address different challenges but seek to arrive at the same goal of protection for refugees and displaced persons. The differences are found not so much in the content or the substance of the bodies of law, but rather in the implementation mechanisms, international supervision, and promotion and dissemination.

Human rights law applies to all human beings without discrimination, in other words to nationals, refugees and displaced persons alike. Refugee law addresses specific refugee concerns, but does not address all of the basic and fundamental human rights of individuals that need to be protected. Human rights law in this sense, can be used to supplement existing refugee law. Equally, humanitarian law may be able to provide for the protection of refugee or displaced persons in circumstances where the others are not applicable.

In refugee law, Article 5 of the 1951 Convention, clearly allows for the application of other instruments granting “rights and benefits” to refugees. These other instruments include international human rights and humanitarian law.

The responsibility for the protection and assistance of Internally Displaced Persons (IDPs) rests first and foremost with national governments and local authorities. A framework of international standards exist, most notably within international human rights law and customary law, which oblige States to ensure respect for universal human rights that are essential to the survival, dignity and well-being of all persons subject to their jurisdiction. In situations of armed conflict, international humanitarian law is also applicable to protect civilian populations who become internally displaced.

### ***Non-binding instruments***

Principles and practices of international law are often stated in declarations, resolutions, principles or guidelines. While they have no binding effect on States they nevertheless represent a broad consensus on the part of the international community. Sometimes they may be more detailed than treaties and can complement them.

An example is the United Nations Guiding Principles on Internal Displacement,

that identifies the rights and guarantees relevant to the protection of the internally displaced in all phases of displacement. They provide protection against arbitrary displacement, offer a basis for protection and assistance during displacement, and set forth guarantees for safe return, resettlement and reintegration. Although they do not constitute a binding instrument, these Principles reflect and are consistent with international human rights and humanitarian law and analogous refugee law.

### ***Regional Instruments***

Often it may be easier for States to agree on and implement regional instruments because they provide a common approach to certain issues and deal with problems specific to the region/countries concerned. Regional instruments are usually adopted in the framework of a regional organisation. There are various regional human rights systems in Africa, Europe, the Americas and the Islamic and Arab States (see **Handout 1.1** for the major regional human rights instruments).

Regional instruments can sometimes provide higher standards of protection than an international treaty. For example, the African Charter on the Rights and Welfare of the Child prohibits all forms of military recruitment of children under the age of 18, whereas the Optional Protocol to the Convention on the Rights of the Child permits the voluntary recruitment of children under 18 by States in some instances (see ARC Resource Pack on **Child Soldiers Topic 2**).

### ***National Law***

National law contains the practical provisions for protecting refugee children including, providing concrete implementation measures and mechanisms. In some States, the Constitution guarantees some of the standards contained in international instruments. In some cases international treaties are self-executing, meaning that they can be directly invoked before the courts, while in others only when the provisions have first been incorporated into the national legislation.

Often the fact that a law exists to protect certain rights is not enough if these laws do not also provide for all of the legal powers and institutions necessary to ensure their effective realisation. Staff working in a country should always refer to the national law of the State and the various mechanisms for their implementation.

## **THE LEGAL FRAMEWORK FOR REFUGEE AND DISPLACED CHILDREN**

### **1. Human rights law**

Human rights are inherent entitlements which come to every person as a consequence of being human. Treaties and other sources of law generally serve to formally protect individuals and groups against actions which interfere with fundamental freedoms and human dignity.

Examples of international human rights treaties include, the Convention on the Rights of the Child, the International Covenant on Civil and Political Rights, and the Convention Against Torture.

The following are some of the most important characteristics of human rights:

- human rights are founded on respect for the dignity and worth of each person;
- human rights are universal, meaning that they are applied equally and without discrimination to all people;

### Action for the Rights of Children (ARC)

- human rights are inalienable, in that no one can have his or her human rights taken away other than in specific exceptional situations – for example, during times of war freedom of movement may be restricted;
- human rights are indivisible, interrelated and interdependent, for the reason that it is insufficient to respect some human rights and not others.

Unlike refugee law, some international human rights treaties have provision for bodies to monitor implementation by States. These “**treaty bodies**” review reports on the implementation of human rights submitted by States. They can also issue opinions on the content and scope of particular rights. Examples of treaty bodies and the Conventions they monitor are: the Committee on the Rights of the Child (CRC); the Committee Against Torture (CAT); the Human Rights Committee (ICCPR); the Committee on the Elimination of Discrimination Against Women (CEDAW); the Committee on Economic, Social and Cultural Rights (ICESCR); and the Committee on the Elimination of Racial Discrimination (CERD).

## **2. Refugee law**

The legal framework for protecting refugees is composed of the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, and regional refugee instruments, as well as UNHCR EXCOM conclusions, policies and guidelines.

Implementation of refugee law is primarily up to States, although UNHCR has a task of supervising the application of the 1951 Convention and States are required to co-operate with UNHCR under article 35.

The 1951 Convention and its 1967 Protocol are applicable to all persons who are refugees as defined in the instruments. “All persons” clearly includes children and adolescents. Age is taken for granted with respect to the non-discriminatory application of the Articles in the Convention, and as the Convention defines a refugee regardless of age, no special provisions for the status of refugee children exist.

Children thus have a right to seek asylum and obtain protection under the refugee instruments, based on their own claims. In addition, when accompanied by one or both of their parents or guardians, they may be accorded derivative refugee status as dependants, and thus benefit from the needed protection. Although derivative status is not required under any article of the refugee treaties, States nevertheless so grant status in order to promote family unity<sup>1</sup>. Means for a child to obtain refugee status are discussed below under Topic 3.

As a result of having been granted the status of refugee, refugee children benefit from the rights afforded to all refugees as outlined in refugee law, and national laws. These rights include, for example:

- the right not to be returned to territories where the life or freedom of the child would be threatened on account of his/her race, religion, nationality, membership in a particular social group or political opinion<sup>2</sup>;
- the right to the same treatment as accorded to nationals with respect to elementary education<sup>3</sup>.

UNHCR issued a Policy on Refugee Children in 1993, and Refugee Children: Guidelines on Protection and Care in 1994. UNHCR’s Executive Committee has also adopted a number of conclusions on refugee children and adolescents in 1987 (Conclusion Number 47), in 1989 (Conclusion Number 59) and in 1997

(Conclusion Number 84), recommending policies and measures to be adopted by States to enhance the protection of refugee children.

### **3. Humanitarian law**

The main treaties of international humanitarian law are the four Geneva Conventions of 1949 and the two protocols of 1977. The Fourth convention deals specifically with the protection of civilians and is therefore of the most relevance and importance to refugee and displaced populations.

The primary focus of the four conventions is situations of international armed conflict, although a common article 3 obliges all parties to a "non-international" armed conflict, including dissident armed factions, to respect certain minimum humanitarian rules with regard to persons who are not, or are no longer, taking part in hostilities. Children are included as any other civilian under Article 3.

In times of conflict, international humanitarian law aims to protect persons who do not, or no longer, take part in the hostilities (i.e. are not bearing arms), and aims to regulate or restrict the methods and means of warfare. It develops the concept of humane treatment.

International humanitarian law, is applicable not only in conflicts between two or more States (international armed conflicts), but also when the conflict is occurring on the territory of a single State, usually between government and dissident forces (internal conflicts). To develop the protection measures available to civilian populations in armed conflict two protocols were adopted in 1977: Protocol II expanding the common article 3 of the Geneva Conventions.

- (Protocol I) relating to the Protection of Victims of International Armed Conflicts;
- (Protocol II) relating to the Protection of Victims of Non-International Armed Conflicts.

Between the Fourth Geneva Convention, Protocol I and Protocol II, there are more than twenty provisions that give special protection to children affected by armed conflict.

Under international humanitarian law, both during international and internal armed conflicts, children benefit from protection on two levels: first, as members of the civilian population in general, and second, as a vulnerable category deserving specific protection. Article 38 paragraph 5 of the Geneva Convention IV states that, while protected civilians should in principle receive the same treatment as aliens in time of peace, children under fifteen years are to benefit from any preferential treatment accorded to the corresponding categories of the native population.

Additionally, in terms of general principles, Article 77 paragraph 1 of Protocol I states that "children are to be the object of special respect and shall be protected against any form of indecent assault. The Parties to the conflict are to provide them with the care and aid they require." This protection is understood to be applicable for all children, without exception, who are victims of international armed conflict. Note that the same protection is accorded by Article 4.3 of Protocol II relating to the Protection of Victims of Non-International Armed Conflicts.

## TRAINING MATERIALS FOR TOPIC 1

Overhead 1.1: Key Learning Points for Topic 1	Summary of key learning points.
Overhead 1.2: Rights Foundation for Refugee and Displaced Children	Diagrammatic representation of the legal framework for refugee and displaced children.
Overhead 1.3: Framework of International Legal Standards	Summary of key points relating to the rights of refugee and displaced children.
Overhead 1.4: Three Rooms in One House	Using the “three rooms” analogy, the diagram shows the CRC as our entry point.
Overhead 1.5: Why choose a Right-Based Approach?	Why organisations adopt a rights-based approach, and some of the benefits.
Exercise 1.1: The Legal Framework for Special Protection of Refugee and Displaced Children	A card base exercise introducing key provisions of a number of legal instruments.
Exercise 1.2: Rights-Based Approaches	Outlines the differences between a rights-based approach and a needs-based approach.
Handout 1.1: Regional Instruments	Provides information on Regional Instruments that affect refugee children.
Handout 1.2: The Mandates of Key Agencies	Mission Statements of Some of the Key Agencies.

## FURTHER SUGGESTIONS FOR TRAINING

1. Use the cards from **Exercise 1.1: The Legal Framework for Special Protection of Refugee and Displaced Children** to familiarise participants with the different types of legal instruments:

- International Refugee Law
- International Humanitarian Law
- International Human Rights Law
- Other International Instruments
- Regional Instruments
- National Law
- Organisational Policy and Guidelines

2. The Save the Children, **Child Rights Programming** publication may provide additional ideas for exercises and activities that could be developed to promote and encourage rights-based approaches to programming.

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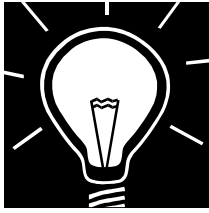
<sup>1</sup> ExCom Conclusion No. 47 (XXXVIII) (1987) “recommended that children who are accompanied by their parents should be treated as refugees if either of the parents is determined to be a refugee.”

<sup>2</sup> Article 33 of the 1951 Convention: Prohibition of expulsion or return.

<sup>3</sup> Article 22 of the 1951 Convention: Public Education.

## International Legal Standards

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### Topic 2

## The Convention on the Rights of the Child (CRC)

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### KEY LEARNING POINTS

- ***The Convention on the Rights of the Child offers the highest standards of protection and assistance for children of any international instrument.***
- ***The CRC offers potential for the protection of refugee and displaced children because of its near universal acceptance.***
- ***The CRC is based on four guiding principles: non-discrimination, the best interests of the child, the right to life, survival and development, and the right to participation.***

With respect to international human rights law, the Convention on the Rights of the Child (CRC):

- is a comprehensive code of rights for children, offering the highest standards of protection and assistance for children under any international instrument. The protection standards go beyond the usual guarantees of health, education and welfare, and include guarantees relating to the child's individual personality, rights to freedom of expression, religion, association, assembly, and privacy;
- reflects a new vision of the child. Children are neither the property of their parents nor are they helpless objects of charity. They are human beings and are the subject of their own rights. The Convention offers a vision of the child as an individual and as a member of a family and the community, with rights and responsibilities appropriate to his or her age and stage of development;
- applies to all children within the jurisdiction of the country, including refugee and displaced children;
- offers potential for the protection of refugee children even in States that are not party to refugee instruments;

The near universal acceptance of the Convention establishes it as a set of international norms that are the basic minimum rights that children are entitled to. In fact, all countries of the world except two have ratified the Convention.

The CRC defines a "child" as everyone under 18 years of age "unless, under the law applicable to the child, majority is attained earlier" (Article 1). For normal purposes this means that it can be applied to everyone up to 18, unless it is demonstrated that they are an adult under applicable national law, in which case they can claim the benefits of adulthood, while still being able to claim the protection of the CRC.

## **IMPLEMENTATION**

By ratifying the Convention on the Rights of the Child, States commit to undertaking "all appropriate legislative, administrative and other measures for the implementation of the rights recognised in the Convention" (CRC, article 4). States report on such measures to the Committee on the Rights of the Child, which is charged with monitoring States' implementation of the convention.

In its review of country reports, the Committee urges all levels of government to:

- ensure that all legislation is fully compatible with the Convention by incorporating it into domestic law or ensuring that its principles take precedence in cases of conflict with national legislation;
- ensure that sufficient data are collected and used to improve the situation of all children in each jurisdiction;
- raise awareness and disseminate information on the Convention by providing training to all those involved in government policy-making and working with or for children;
- involve civil society, including children themselves, in the process of implementing and raising awareness of child rights.

## **THE ROLE OF LOCAL AUTHORITIES**

In many countries, local governments are increasingly assuming responsibility for protecting child rights. Indeed, local authorities have a pivotal role to play in giving support to other service providers and also in the areas of regulation, enforcement and monitoring of child rights. This role is increasing where decentralisation and reduction of safety nets have created vacuums in social provision, adding to the burden at the local level. In many such cases, municipal authorities and local branches of national agencies become the primary actors in providing basic services for children. Even where assistance from higher levels of government is lacking, local authorities maintain the legal responsibility to respond as best they can to the situation of children under their jurisdiction.

## **GUIDING PRINCIPLES UNDERLYING THE CRC**

The CRC is underpinned by four main principles: non-discrimination, the best interests of the child, the right to life, survival and development, and the right to participation (they appear in **Overhead 2.3**).

### **1. Non-discrimination**

*States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.*

**Article 2(1), CRC.**

The theme of non-discrimination is of special importance for protection of refugee and displaced children. It relates to the recognition that every child within a Member State's jurisdiction should be given the opportunity to enjoy the rights

recognized by the Convention without regard to citizenship, immigration status, or any other status.

In a similar manner, Article 24(1) of the ICCPR states that “every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.”

The implementation of the articles of the CRC in a non-discriminatory manner ensures that measures of protection are aimed at removing all discrimination in every field, for example, between children who are nationals, displaced or aliens; between boys and girls; and disabled and non-disabled children.

The rights under the Convention are equally applicable to aliens, refugees, displaced and even those children who are in the State illegally. Legal status cannot be used as a basis for any form of discrimination against the child.

The Committee on the Rights of the Child regularly reviews the situation of refugee children and has on several occasions pointed out that the Convention is meant to ensure them equal rights.

“The Committee notes that all children who have had their asylum requests rejected but remain in the country have had their rights to health care and education provided de facto but not de jure. It is the view of the Committee that such services should be provided as a matter of principle according to the letter and spirit of article 2 and 3 of the Convention.” (Norway IRCO, Add. 23)

“... with respect to the provision of health and education services to children in asylum-seeking situations, the Committee wishes to draw attention to the provisions of Article 2 of the Convention which state, inter alia, that States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction.” (Denmark, IRCO, Add. 33, para. 30)

## **2. Best interests of the child**

*In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.*

### **Article 3 (1), CRC.**

Although the principle of best interests is not a new concept, it is particularly important in the context of the CRC, because, for the first time, it clearly links the child’s best interests to respect for and fulfilment of his/her rights.

The principle is evident, for example, in articles that provide obligations to consider the best interests of individual children in particular situations:

- **separated children:** the child shall not be separated from his or her parents against his or her will except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child (Article 9(1), CRC). Children temporarily or permanently deprived of their family environment “or in



whose own best interests cannot be allowed to remain in that environment” are entitled to special protection and assistance (Article 20, CRC).

- **detained children:** children who are deprived of their liberty must be separated from adults “unless it is considered in the child’s best interest not to do so.” Article 37(c), CRC

Article 3 of the CRC emphasises that governments and public and private bodies must ascertain the impact on children of their actions, in order to ensure that the best interests of the child are a primary consideration, giving proper priority to children and building child-friendly societies.

In deciding policy, a full analysis on how a certain course of action may affect children is required. For example, because the interests of children are not always identical to adults’ interests, and can at times even conflict, the State must carefully separate the various interests at stake. The policy does not necessarily have to be based on what is best for children, but if any conflicts are identified, the decision-makers must make the “best interests” of children “a primary consideration.” In other words, the best interest of the child must be considered by the State when formulating policy.

The application of the Article is not limited to the level of policy-making, but also applies at the level of the individual child. How a course of action might affect the child individually must be looked at closely, which is a requirement similar to that in making policy decisions. In determining the child’s best interests, decision makers need to consider both the objective standards deemed to be in the child’s best interest, and subjective ones, which take into consideration the child’s views. Related to the right to participation, a best interest decision must involve the child.

The decision about how to establish a child’s best interests can often be difficult, and no single answer may be obviously and indisputably correct. The phrase itself, “best interest of the child”, is a broad term and the interpretation to be given to it will depend on the circumstances of each case. There are many factors that may affect the best interests of the child, such as the age, sex, cultural background, general environment and past experiences of the child. All these factors make a precise definition of the principle difficult.

Any interpretation of the principle must be in the spirit of the entire CRC, with the child being a subject of rights.

The best interests of the child are best assessed on a case-by-case basis, involving the evaluation of all relevant factors and giving due regard to expert advice (both from a legal and child development perspective).

(The Best Interests principle is also considered in the ARC Resource Pack **Child and Adolescent Development Topic 6**).

### **3. Right to life, survival and development**

*States Parties recognize that every child has the inherent right to life, and, shall ensure to the maximum extent possible the survival and development of the child.*

**Article 6, CRC.**

Under Article 6 of the CRC, States must adopt appropriate measures to safeguard life and must refrain from any actions that intentionally take life away. This

includes taking measures to increase life expectancy and to lower infant and child mortality, as well as prohibitions on the death penalty etc. States should fully ensure the right to an adequate standard of living, including the right to housing, nutrition and the highest attainable standards of health. The 'survival and development' principle is not limited to physical aspects but also emphasises the need to ensure full and harmonious development of the child, including at the spiritual, moral and social levels, where education plays a key role.

The principle is crucial to the implementation of the whole Convention. For example, early marriage will threaten the rights of both the child-mother and her new baby to life and maximum survival and development. For refugee and displaced children, armed conflict poses a threat to the right to life from which no derogation is permitted, even in times of emergency. Particularly, armed conflict can have adverse effects on the child mental and spiritual development as well as for survival if children are separated from their families or injured. Abuse, exploitation and violence will also threaten child survival and development.

States Parties are required to ensure these rights "to the maximum extent possible" i.e. they must do their utmost to give the highest priority to actions undertaken in this regard.

#### **4. Participation**

*"States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child".*

**Article 12 (1), CRC.**

Together with the child's right to freedom of expression (Article 13), and other civil rights to freedom of thought, conscience and religion (Article 14), and freedom of association (Article 15), this article underlines children's status as individuals with fundamental human rights, and views and feelings of their own.

The significance of this article is that the child has the right to influence decisions affecting his or her life; that children should be assured the right to express their views freely, but also that they should be heard and that their views be given "due weight."

The principle of participation, for example, can be given effect in all asylum proceedings, when children's views and feelings should be taken seriously, including during refugee status determination (RSD).

Participation by children and young people in the activities of the refugee or displaced community is another way in which States Parties to the CRC can fulfil their obligation to guarantee "individual personality" rights to refugee and displaced children.

Advocates must recognise that efforts on behalf of refugee or displaced children fall short if they are perceived only as individuals to be fed, immunised or sheltered, rather than treated as participating members of their community.

These issues are examined further in the ARC Resource Packs **Child and Adolescent Development Topic 7** and **Community Mobilisation Topic 8**.

## **A GENDER PERSPECTIVE ON THE CRC**

The principle of non-discrimination in **Article 2** of the CRC specifically includes gender as an aspect of discrimination. States Parties are required to actively protect the child against gender discrimination, including positive action and appropriate remedies. The Committee on the Rights of the Child has responded to country reporting on their implementation of the CRC, with recommendations and interpretations that recognise a pervasive global discrimination against girls.

The Committee has identified traditional values, attitudes and customs that perpetuate discrimination against girls, and instances where this discrimination is reflected in national legislation. It has urged that political, religious and community leaders should be encouraged to take an active role in supporting efforts to eradicate traditional practices or customs which discriminate against children, particularly the girl child. States should institute both preventive and pro-active measures to combat discrimination against girls such as an integrated public information campaign aimed at promoting the rights of girls in society and particularly within the family.

Similarly, the principle of the child's best interests, **Article 3**, is subject to different application on the basis of gender. Where there are competing or conflicting human rights interests, for example between different individual children or groups of children, the best interests of girls are generally sacrificed to those of boys. For example, when educational resources are allocated, girls' schools usually receive less funding and fewer scholarships. Of special concern are vulnerable groups of girls, including those affected by armed conflict, refugee girls and working girls. In many cases, girls, especially those who marry while children, cease to be granted the status and rights of children at all.

**Article 6**, the right to life and maximum survival and development, has particular gender implications. For example, an early and lower age of marriage for girls not only raises an issue of discrimination under Article 2 but also threatens the rights of both the child-mother and the new child. In societies where boys are valued over girls, unbalanced population figures by gender indicate that girls are dying, either through prenatal sex-selection, infanticide, or neglect during early infancy. Those girls who survive typically receive less food, health care, education, and rest and leisure than boys and experience greater threat of violence, both in public and in the family.

**Article 12**, respect for the views of the child, also has an important gender dimension since "girls are less encouraged than boys to participate in and learn about ... societies with the result that they are not offered the same opportunities as boys to take part in decision-making processes." (Beijing Platform for Action, para. 265). To enjoy this right, educational and other strategies are needed to ensure girls an equal right to participation and to respect for their views.

## **CATEGORIES OF CRC RIGHTS**

The rights established in the CRC can be usefully divided into four different categories. These categories can assist in highlighting the relevance of the CRC to various aspects of humanitarian activity.

### **1. Survival Rights**

Covering the right to life and the needs most basic to existence, this category includes many activities that are at the centre of assistance programmes. Staff can ensure that these rights are respected by:

- ensuring availability of clean water and sanitation;
- ensuring the availability and adequate standard of shelter, with humane living conditions (space, security, privacy);
- providing an adequate food ration for the child survival and physical and mental development;
- ensuring that appropriate health care is available to all.

### **2 Protection Rights**

Necessary for safeguarding children against all forms of abuse, neglect and exploitation (e.g. special care arrangements; protection against involvement in armed conflict, child labour, sexual exploitation, torture and drug abuse). This can be ensured through, for example:

- providing education which will assist monitoring, avoid children including adolescents becoming idle, provide them with alternatives and restore a daily structure to their lives;
- being aware of and reporting incidents of abuse and exploitation, combined with strong advocacy towards statutory authorities, as well as NGOs etc;
- training field staff and refugee leaders;
- setting up secure camps (not close to the borders, camp guards etc)....
- enabling, where necessary, access to appropriate legal recourse and assistance procedures, for example, in terms of asylum applications or reporting abuse.

### **3. Development Rights**

These are the rights required for children to reach their fullest potential (e.g. education, play and leisure, cultural activities, access to information and freedom of thought, conscience and religion). These rights can be implemented by:

- ensuring that all children have access to education with attention to gender, access, quality, curriculum, relevance and language.
- ensuring that children/adolescents have access to non-formal education activities;
- ensuring sexual/reproductive health education (including on HIV/AIDS);
- ensuring play and leisure by organising dance, drawing, painting and for adolescents, sports, discussions and theatre among others;

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- mobilising community structures and preserving the traditional forms of social organisation and cultural activities (traditional dance and arts for example);
- providing access to adequate and appropriate information;
- providing a stable/safe environment to encourage healthy child development while actively pursuing durable solutions.

#### **4 Participation Rights**

Allow children to take an active role in their communities (e.g. the freedom to express opinions; to have a say in matters affecting their own lives; to join associations). Respecting the child's participation rights means, among other things:

- ensuring that the views of the child are taken into account in decisions affecting them (e.g. alternative care for separated children, family reunification etc.);
- making children heard in the refugee status determination process;
- participation in the community life, including planning and development;
- participation in discussions including through youth clubs and associations.

#### **OPTIONAL PROTOCOLS TO THE CRC**

Alarmed by the widespread involvement of children in armed conflicts, as well as increasing commercial sexual exploitation of children, including through the practice of sex tourism and the growing availability of child pornography, the international community has sought to strengthen the protection elements contained in the CRC.

Two Optional Protocols were adopted by the General Assembly in May 2000, and entered into force in 2002. The two Optional Protocols relate to the Involvement of Children in Armed Conflict and the Sale of Children, Child Prostitution and Child Pornography. Other important protection elements concerning these issues are contained in the 1999 International Labour Organisation (ILO) Convention on the Worst Forms of Child Labour (Convention 182), and the African Charter on the Rights and Welfare of the Child.

**The Optional Protocol on the Involvement of Children in Armed Conflict** provides that States Parties shall take all feasible measures to ensure that members of their armed forces under the age of 18 years shall not take part in hostilities (Article 1), and ensure that persons under the age of 18 years are not compulsorily recruited into their armed forces (Article 2). It contains an absolute prohibition against the recruitment or use under any circumstances of children who are less than 18 years old by armed groups that are distinct from the armed forces of a State (Article 4). The Protocol amends Article 38 of the Convention on the Rights of the Child by raising the minimum age of voluntary recruitment (Article 3). States undertake to use all feasible measures to prohibit and criminalise under-age recruitment and use of child soldiers by non-State armed groups (Article 4).

It has to be noted that voluntary recruitment of children under 18 by States is permissible under the Protocol. However, the recruiting State authorities have to put in place safeguards to ensure that the recruitment is voluntary, undertaken

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with the informed consent of the parents and that the children who are so recruited are requested to produce satisfactory proof of age prior to their recruitment.

**The Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography** calls on each State party to proscribe fully, under criminal or penal law, all acts and activities involving offering, delivering or accepting, by any means, a child for the purpose of sexual exploitation. Article 2 of the Protocol defines what is meant by sale of children, child prostitution, and child pornography. The Protocol also prohibits the transfer of a child's organs for profit and the engagement of children in forced labour. States undertake to criminalise any act that involves offering, obtaining, procuring, or providing a child for child prostitution, regardless of where the offence takes place and whether individuals or organised groups are responsible for its commission. The Protocol stresses the importance of international co-operation to apply the principle of extraterritoriality, i.e. that nationals of States Parties, committing a sexual offence against children in another country, can be prosecuted in their own country (articles 4 and 6). The production, distribution, dissemination, importation, exportation, offer, sale or possession of child pornography for sexual purposes are also criminalised.

## **TRAINING MATERIALS FOR TOPIC 2**

Overhead 2.1: Key Learning Points for Topic 2	Summary of key learning points.
Overhead 2.2: Why is the CRC Important in Protecting and Assisting Refugee and Displaced Children?	Summarises the four main reasons why the CRC is important for refugee and displaced children.
Overhead 2.3: Key Principles Underlying the CRC	The three main principles underlying the CRC.
Overhead 2.4: Categories of CRC Rights	Summarises the four main categories of rights in the CRC.
Exercise 2.1: Using the Convention on the Rights of the Child	Small group exercise on identifying rights which are not being respected in a country.
Exercise 2.2: Categories of the CRC	Considers the activities of organisations in relation to child rights.
Exercise 2.3: The CRC and UNHCR Policy on Refugee Children	Identifies connections between UNHCR policy and the CRC.
Exercise 2.4: Civil Rights and Freedoms	Asks participants to identify ways of making children's civil rights a reality.
Handout 2.1: CRC Cards Template	Pre-prepared CRC cards including unofficial summaries of main provisions.

## **FURTHER SUGGESTIONS FOR TRAINING**

You can use the CRC Cards in various ways. For example, ask participants to sort the cards according to the categories of CRC Rights or ask them to identify the cards which seem most relevant to their work.

## International Legal Standards

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### Topic 3

## Legal Status - Birth Registration, Nationality and Refugee Status Determination

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### KEY LEARNING POINTS

- ***Birth registration of a child must be ensured, not only because it is a right in itself, but because it is an essential way of protecting a child's other basic human rights.***
- ***Birth registration can be crucial in confirming nationality and avoiding statelessness.***
- ***In respect to children seeking asylum, there are three main ways for children to obtain refugee status: group determination, determination based on an adult's claim and the child's individual claim.***
- ***Displaced children – those who remain in their national territory - can be among the most vulnerable, and cannot claim special protection such as that accorded to refugees under international refugee law.***

Many issues related to the protection of children are directly linked to ensuring that they have recognised legal status within a country. Children's enjoyment of basic rights such as access to medical care, social services and education are often dependent on the possession of identity documents, obtained through birth registration and the acquisition of nationality.

For refugee children the establishment of their legal status in the country of asylum, and therefore enjoyment of basic rights, is especially challenging. Article 22 of the CRC guarantees that refugee children, including those seeking refugee status, receive appropriate protection and humanitarian assistance, and enjoy the rights contained in the Convention without discrimination.

In extreme cases, conflicting national procedures can result in children finding themselves "stateless" as a result of not being granted nationality by any State.

### **BIRTH REGISTRATION**

Birth registration is a right under the CRC and the International Covenant on Civil and Political Rights (ICCPR article 24.2). According to Article 7.1 of the CRC, the child shall be registered immediately after birth and shall have the right from birth to a name and the right to acquire nationality. Article 8 guarantees the right of the child to preserve his or her identity, including nationality.

Birth registration acknowledges the existence of the child in the State and the status of the child before the law. For separated children, the existence of birth registration records can be a vital tool for family tracing and reunification.

Registration of the child has to be done immediately after birth. Birth registration must, as a minimum, include:

- the child's name at birth;
- the child's sex;
- the child's date of birth;
- where the child was born;
- the names and addresses of the parents of the child;
- the parents' nationality status.

Birth registration has to be ensured to every child, including non-nationals, asylum seekers, refugees or displaced. Ideally, births of all refugee children should be registered through the same procedure applicable to nationals. In exceptional circumstances the State may also establish mobile registration offices, for example, in emergency situations, including armed conflicts.

Where States refuse to integrate the registration of births of refugees with national children, a parallel and similar mechanism for birth registration of refugee children should be encouraged. Where this also fails, a local registration system to ensure, at a minimum, that the date, place of birth and the names and nationalities of both parents are recorded in a traceable way should be established. Parents should always receive a validated birth certificate of the child, preferably prepared by the national authorities.

The Refugee Children: Guidelines on Protection and Care (1994) state that UNHCR staff should ensure that the births of refugee children are registered. In case the local authorities do not issue birth certificates, UNHCR should issue a written attestation of the facts of birth. Under the Guiding Principles on Internal Displacement (Principle 20), authorities shall issue, for internally displaced persons, birth certificates to give effect to the right to recognition as a person before the law.

Failure or refusal of a State to ensure birth registration can lead to the inability to establish an identity and acquire a nationality.

## **NATIONALITY AND STATELESSNESS**

In addition to birth registration, the CRC and ICPPR provide that all children shall have the right to acquire a nationality. But this does not mean that every child born in the territory of the State should acquire the nationality of that State. The acquisition of nationality will depend upon the laws of the State concerned; established through place of birth (*jus soli*) or through descent (*jus sanguini*).

Regardless of which rule may apply, States must ensure through their laws and other international obligations that every child has the right to acquire a nationality. This right should be without discrimination of his or her parents' nationality (i.e. in the case where *jus sanguini* rule applies and nationality derives only through the father, the right of the child to acquire nationality through the mother is restricted. This may be problematic where the mother is a national but is married to a refugee).



Moreover, article 7 of the CRC points to the imperative to ensure this right particularly where a child would otherwise be stateless. For example, conflicting national laws of two States, where the asylum country applies the rights to nationality *jus sanguini* and the country of origin applies it *jus soli* can lead to cases where a child is rendered stateless.

Unaccompanied or orphaned children can face particular problems, as it is often hard to identify their nationality. The 1961 Convention on the Reduction of Statelessness in its article 2 stipulates that foundlings should acquire the nationality of the State in which they are found in the absence of the proof of the contrary. UNHCR is empowered to exercise the full range of its responsibilities on behalf of stateless persons, and according to article 11 of the 1961 Convention, is the body to which a stateless person should turn to for assistance and claims.

The 1995 UNHCR Executive Committee Conclusion on the Prevention and Reduction of Statelessness and the Protection of Stateless Persons (Conclusion No. 78) encouraged UNHCR to promote the prevention and reduction of cases of statelessness, through notably providing advice on the preparation and implementation of nationality legislation, and advocating for accession to the two conventions on statelessness (the other being the 1954 Convention relating to the Status of Stateless Persons).

UNHCR's Refugee Children: Guidelines on Protection and Care (1994) requests staff to ensure that its field offices assist in articulating claims, promote activities to reduce statelessness, and to make sure that all refugee children have a nationality or are able to acquire one, through naturalisation.

## **REFUGEE STATUS**

As already mentioned, refugee children face a special complication in needing to establish their legal status in a country of asylum.

Article 22 of the CRC addresses the rights of refugee children to appropriate protection and humanitarian assistance, and as already indicated, those who wrote the Convention did not intend for refugee children to be treated differently from nationals in their country of residence. Its special reference to children who are "seeking refugee status" also underlines the importance of extending the protection to all children, including those seeking asylum and those whose applications for refugee status are being processed.

As a first step for protection, access to the territory to seek asylum must be granted. This is of special importance for unaccompanied and separated children, because of their special vulnerability. Gaining entry into a country of asylum can be very difficult and, because of the nature of their flight, may be additionally complicated if those arriving at a border were unable to carry relevant documents (if these were indeed available in the first place).

After arrival, an application for asylum must be made within a time limit defined by the law of the country they arrive in. Under the 1951 Convention, a refugee is any person who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country or to return to it. The status of refugee is declaratory which means that a person does not become a

refugee because of recognition, but is recognised because he/she is a refugee. Governments normally establish refugee status determination procedures (UNHCR may at times assist in this process if requested by the government) to decide on applications for refugee status. UNHCR advocates for rapid, flexible and liberal procedures for refugee status determination.

Temporary protection arrangements granted upon arrival in a country of asylum must not become permanent. It is important that an appropriate durable solution is found.

## **REFUGEE STATUS DETERMINATION FOR CHILDREN**

There are three basic methods by which children may obtain refugee status (see **Overhead 3.2**). Under all methods, protection and assistance must be extended to the child without discrimination.

- **Group determination**

If a refugee movement is too large to make individual status determination possible, the State may grant refugee status to all members of the group. Each child in the group automatically receives refugee status (*prima facie*).

- **Determination based on an adult's claim**

When the head of a household is granted refugee status, the common practice of States is to grant refugee status to the dependants to preserve family unity. This includes the child born in a country of asylum to refugee parents.

- **A child's individual claim**

Children should have access to asylum procedures, regardless of their age. Individual claims, however, are most often heard in cases of unaccompanied children.

The following considerations should be taken into account in refugee status determination procedures for children:

- refugee status applications of children should be given priority, and every effort should be made to reach a decision promptly and fairly. All appeals should be processed fairly and as expeditiously as possible;
- an asylum-seeker child should be represented by an adult who is familiar with the child's background and who would protect his/her best interests;
- if possible, interviews should be conducted by specially qualified and trained officials with appropriate knowledge of the psychological, emotional and physical development and behaviour of children, and who will take into account the special nature of the child's application. If possible, the interviewer should share the culture and language of the child;
- interviewing techniques should adopt simple language appropriate to the development stage of the child, and develop a trusting relationship with the child (see the ARC Resource Pack on **Working with Children**). All elements of the process should be explained to the child;
- children should be kept informed in an age-appropriate manner, about the procedures, what decisions have been made about them, and the possible

consequences of their refugee status; in all cases, the views and wishes of the child should be elicited and considered, in accordance with Article 12 of the CRC;

- although the same definition of a refugee applies to all individuals, regardless of their age, in the examination of the factual elements of the claim of an unaccompanied child, particular regard should be given to circumstances such as the child's stage of development, his/her possibly limited knowledge of conditions in the country of origin, and their significance to the legal concept of refugee status;
- the way in which certain human rights may be violated as well as the nature of such violations against children may be different from how they occur in the case of adults. Certain policies and practices constituting violations of specific rights of the child may, under certain circumstances, lead to situations that fall within the scope of the refugee definition. Examples include the recruitment of children for regular or irregular armies; subjecting children to forced labour, and the practice of female genital mutilation on girls;
- finally, the best interests rule should be respected in the refugee status determination process.

Reference should be made to the UNHCR Guidelines on Policies and Procedure in dealing with Unaccompanied Children Seeking Asylum (1997) for more detailed information on the procedures involved in dealing with children seeking asylum. It should be noted that these guidelines, while referring to unaccompanied children throughout also indicate procedures for dealing with "children accompanied by adults who are not their parents" (see Annex II) – this group are now generally referred to as separated children (see definitions in Topic 1 of the ARC Resource Pack **Separated Children**).

The UNHCR Guidelines on Procedure for Determining Refugee Status under the UNHCR Mandate (Draft Version 2001, Chapter 5), and the UNHCR Guidelines on Interviewing Unaccompanied Minors and Preparing Social History Forms (1990) also offer guidance on the special procedures concerning claims for refugee status by children.

## **DURABLE SOLUTIONS**

Protecting the child is not limited to ensuring his/her stay in the country of asylum, but also involves seeking a solution for the refugee problem. In the search for a durable solution, the best interests of the child and family unity will be primary considerations. The most desirable durable solution is usually voluntary repatriation, whereby refugees decide, and are able, to freely return to the country of origin.

When voluntary repatriation is not possible, other solutions that must be considered will be local integration and resettlement. Local integration, is the absorption of refugees into the local community in the country of asylum. In some cases, they become nationals of that country. However it may remain a challenge to ensure that they are accorded the same access to services as the local community. Local integration can only be achieved with the consent and active participation of the government and the population concerned.

Resettlement often happens in cases of family reunification, or if the child has a serious protection problem and is unable to enjoy safe asylum in his/her country of asylum. In other cases resettlement is considered on medical grounds where the child requires specialised treatment that is not available in the country of asylum. Resettlement involves the transfer of refugees from the country where they have sought refuge to another State which has agreed to admit them. They will usually be granted asylum or some other form of long-term residence rights and in many cases the opportunity to become naturalised citizens. Resettlement can be difficult for the child as it is likely to involve re-adapting to a new social and cultural context.

### **INTERNALLY DISPLACED PERSONS (IDPs)**

Internally displaced persons are persons who have been forced to flee their homes suddenly or unexpectedly in large numbers, as a result of armed conflict, internal strife, systematic violations of human rights or natural or man-made disasters; and who have not crossed an internationally recognised State border. Because they remain in their national territory, displaced persons cannot claim special protection such as that accorded to refugees under international refugee law.

The responsibility for the protection of IDPs rests first and foremost with national governments and local authorities. Internally displaced children are entitled to enjoy the same rights and freedoms under national and international law as the rest of the country's citizens (see **Topic 1** for the legal framework of protection).

However, in reality, displacement will generally entail deprivation of multiple rights and of vital services. In cases where Governments are unable or unwilling to meet the needs of their internally displaced citizens, international organisations have at times assumed this role on an ad hoc basis.

The Guiding Principles on Internal Displacement are a key reference for those working on behalf of displaced persons. These principles address all three phases of displacement: the norms applicable before internal displacement occurs (protection against arbitrary displacement), those that apply in actual situations of displacement, and those that apply to return and reintegration. They consolidate into one document the legal standards relevant to the internally displaced, identifying and filling legal gaps that have been identified.

The Principles are intended to be morally binding and should provide an authoritative statement of the rights and the guiding responses to the plight of the internally displaced. Reference can also be made to regional initiatives on IDPs: the Addis Ababa Document on Refugees and Forced Population Displacements in Africa of 1994, and the San Jose Declaration on Refugees and Displaced Persons also of 1994.

### **TRAINING MATERIALS FOR TOPIC 3**

Overhead 3.1: Key Learning Points for Topic 3	Summary of key learning points.
Overhead 3.2: How Children Achieve Refugee Status	Summarises the three main ways in which children achieve refugee status.

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Overhead 3.3: Birth Registration (Article 7, CRC)	Summarises the rights argument for registering all births.
Overhead 3.4: Birth Registration Options	Summarises the main options for registering the births of refugee children.
Exercise 3.1: Birth Registration	Reinforces an understanding of the fundamental right to an identity. Identifies legal and practical arguments which can be used to seek the co-operation of a host government in birth registration.
Handout 3.1: Birth Registration	Summarises some of the key issues to consider in relation to birth registration.
Handout 3.2: UNHCR's Involvement with IDPs	Details the criteria for UNHCR's involvement with internally displaced persons.

### **FURTHER SUGGESTIONS FOR TRAINING**

Open a discussion with participants on how birth registration is conducted in the locations where they work. What are the practical difficulties they have encountered and how have they overcome them?

## International Legal Standards

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### Topic 4

## Detention of Children

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### KEY LEARNING POINTS

- ***The detention of children must be a measure of last resort and be for the shortest appropriate period of time.***
- ***International law places a special emphasis on the principle of family unity.***
- ***Where the child is deprived from his/her family environment, the child is entitled to alternative forms of protection, care and assistance.***
- ***Protecting the child is not limited to ensuring his/her rights during his/her stay in the country of asylum, but also involves seeking a durable solution.***

### DETENTION

Implicit from the provisions of the CRC, the deprivation of liberty of any child, including refugee and displaced children, is not in the child's best interests. If children are ever to be detained it must be as a measure of last resort.

Article 37(b) of the CRC states that:

*No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.*

The UN General Assembly has adopted detailed standards that apply whenever minors are deprived of their liberty (UN Rules for the Protection of Juveniles Deprived of their Liberty, UN General Assembly Resolution 45/113, December 1990 and UN Standard Rules for the Administration of Juvenile Justice, UN General Assembly Resolution 40/33 of 29 November 1985). These standards require that the juvenile justice system should uphold the rights and safety and promote the physical and mental well-being of juveniles. Among other issues, States must provide special education programmes to children of foreign origin with particular cultural or ethnic needs.

The United Nations Guiding Principles on Internal Displacement states in its Principle 12.3 that internally displaced persons, including children, shall be protected from discriminatory arrest and detention as a result of their displacement.

## **DETENTION OF REFUGEES AND ASYLUM SEEKERS**

The **1951 Convention relating to the Status of Refugees** does not explicitly refer to detention of refugees and asylum-seekers; it nevertheless provides, in its Article 31, that refugees should not be detained simply on account of their illegal entry or presence in a State. It adds that “States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularised or they obtain admission into another country”.

The UNHCR Policy on Refugee Children (C.27.a) requires staff to specifically pursue the protection of refugee children at risk from detention. UNHCR’s position is that refugee children should not be detained, however national laws at times regrettably require detention of asylum-seekers<sup>4</sup>, including children, because of illegal entry into the territory. Special protection measures for these children are necessary. These measures must be based on both the law and good practice.

The UNHCR Refugee Children: Guidelines on Protection and Care state that if refugee children are detained in airports, immigration holding centres or prisons, they must not be held under prison-like conditions. All efforts must be made to have them released from detention and placed in other appropriate accommodation

As usual, the best interest of the child prevails in any decision regarding the detention of refugee children.

Article 2 of the 1951 Convention relating to the Status of Refugees establishes that refugees, including children, must comply with the laws of the country of asylum. Even if refugee children are detained for reasons related to criminal offences, they still have the right to standards of treatment established under human rights instruments including UN Standard Rules, Article 9 of the International Covenant on Civil and Political Rights (protection from unlawful or arbitrary detention), and notably, article 37 and article 40 of the CRC.

Under the UN Rules for Juveniles deprived of their liberty, States are required to provide special education programmes to children of foreign origin with particular cultural or ethnic needs.

## **DETENTION IN CONFLICT SITUATIONS**

In cases where protected persons accused of offences are detained, international humanitarian law emphasises the need for special treatment of minors, in particular avoiding family separations, and protecting family unity.

Any detention, as “a measure of last resort”, must:

- be the exception;
- be in conformity with the State’s law;
- provide a distinction between refugees/asylum-seekers and other aliens, not to mention common criminals;
- have proper justification, and be for the shortest time possible.

Under International Humanitarian Law, **The Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War** of 1949 in article 76 states that while protected persons accused of offences can be detained, “proper regard shall be paid to the special treatment due to minors.” In cases of internment, “members of the same family, and in particular parents and children, shall be lodged together in the same place of internment, except when separation of a temporary nature is necessitated for reasons of employment or health”. Article 82 emphasises the fact that, wherever possible, interned members of the same family shall be housed in the same premises and given separate accommodation from other internees, together with facilities for leading a proper family life. Article 75, paragraph 5 of **Protocol I relating to the Protection of Victims of International Armed Conflicts** adds that “in cases where families are detained or interned, they shall, whenever possible, be held in the same place and accommodated as family units.”

In addition, in case of internment, the education of children and young people shall be ensured within the place of internment or outside. (Article 94 paragraph 2 of the Geneva Convention IV relative to the Protection of Civilian Persons in Time of War). Article 119 paragraph 2 of GCIV adds that any disciplinary measures applied to internees shall take into account the internees’ age.

## **DETENTION AND FAMILY UNITY**

Article 9(4) of the CRC provides that where a child is separated from his parents as a result of detention or deportation of the child or his/her parents, for example, there is an obligation to provide the child or the parents with information concerning the whereabouts of the absent family members. Article 10 provides that applications for reunification of separated family members be dealt with positively, humanely and as quickly as possible (See Topic 5, Family Unity).

Families must be kept together at all times, which includes their stay in detention as well as being released together. If release of the parents, or primary caregiver cannot be obtained, it is most often in the best interest of the child to preserve family unity. If such a decision is taken, protection guarantees are of paramount importance. The conditions must be humane, which means that the needs and rights of children must be met. These include the right to an education.

The United Nations **Guiding Principles on Internal Displacement** Principle 17.4 adds that members of internally displaced families whose personal liberty has been restricted by internment or confinement in camps shall have the right to remain together.

## **TRAINING MATERIALS FOR TOPIC 4**

Overhead 4.1: Key Learning Points for Topic 4	Summary of key learning points.
Overhead 4.2: Detention in Conflict Situations	Key points on detention from international humanitarian law.
Exercise 4.1: Detention of Children	Reinforces an understanding of the special measures of protection concerning detention of children.



## **FURTHER SUGGESTIONS FOR TRAINING**

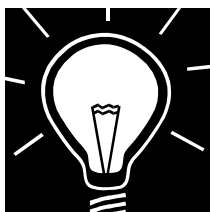
As a follow up to **Exercise 5.1: Detention of Children**, participants could be asked to describe the national law concerning detention which applies in their country.

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<sup>4</sup> UNHCR policy on detention of refugees and asylum-seekers is contained in EXCOM Conclusion No.44 of 1986.

## International Legal Standards

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### Topic 5

## Family Unity and Alternative Care

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### KEY LEARNING POINTS

- ***International law places a special emphasis on the principle of family unity.***
- ***Family reunification, particularly in cases of voluntary repatriation of unaccompanied and separated children, must be a priority.***
- ***Family tracing and reunification for unaccompanied and separated children must always be a priority.***

All children have special physical, psychological and social needs that must be fulfilled in order for them to grow and develop. The family is the major provider for these needs. Under Article 18, the CRC recognises the right of the child to be raised by both of his/her parents, and requires appropriate assistance to be rendered to parents and legal guardians in the carrying out of their child-rearing responsibilities.

As the family is recognised to be the most important environment for a child to be in, he should not be separated from his parents, unless it is necessary for his best interests (article 9 of the CRC). However, in times of emergency, such as natural disasters and flight from conflict, children do become separated from their parents both accidentally and deliberately.

International humanitarian law also places a special emphasis on the principle of family unity, including facilitating contact between disrupted families and ensuring care and protection during transfers and evacuations (e.g. the Fourth Geneva Convention, article 24 on the well-being of orphaned or separated children, articles 25 and 26 on information on the whereabouts of family members; article 27 on respect of family rights; and article 49, non-separation of family members during transfer or evacuations by an occupying power).

### SEPARATED CHILDREN - DEFINITION

**“Separated Children”** are defined by UNHCR as children under 18 years of age who are separated from both parents or from their **previous** legal or customary primary caregiver.

Some children are totally alone while others may be living with extended family members, family friends, neighbours, other adults or groups of peers. All such

children are separated children and entitled to international protection under a broad range of international and regional instruments.

This group of children require priority action by all concerned organisations. This action should encompass their early identification, provision for protection and care arrangements, as well as family tracing with a view to the possibility of re-unification.

## **GUARDIANSHIP AND ALTERNATIVE CARE**

The CRC states in article 20 that a child temporarily deprived of his/her family environment shall be entitled to special protection and assistance provided by the State.

Separated children should be identified promptly, and given priority attention. Not being legally dependent, a child must be represented by an adult. Once this identification has been made, a guardian must be appointed, who will act as a substitute for the absent parents in exercising some of the parental rights and duties. The UNHCR Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum state that the guardian should have the necessary expertise in the field of child-care, so as to ensure that the interests of the child are safeguarded and that his/her needs are appropriately met. As much as possible, the legal guardian should be familiar with the child's background and can be a person such as a member of the extended family, a local official or a community leader. Children should not be left to their own resources, and their maintenance, education, as well as the exercise of their culture should be ensured and facilitated in all circumstances. Siblings should be kept together according to the principle of family unity.

For more information related to separated children, please refer to the ARC Resource Pack on **Separated Children**.

## **TRACING AND FAMILY REUNIFICATION**

All attempts should be made to reunite the child with his/her family or other person to whom the child is close. Article 10 of the CRC applies to family reunification in general and so also to family reunification of refugee and displaced children, that has to be dealt with in a positive, humane and expeditious manner.

In humanitarian law, Article 74 of Protocol I Additional to the Geneva Conventions states that the reunion of families dispersed as a result of armed conflicts and shall be encouraged. Protocol II regarding non-international armed conflict lays down that all the appropriate steps to be taken to facilitate the reuniting of families temporarily separated (article 4,3,b).

The UNHCR Executive Committee declared in its Conclusion of 1981 on Family Reunification that "in application of the principle of the unity of the family and for obvious humanitarian reasons, every effort should be made to ensure the reunification of separated refugee families".

Principle 17.3 of the Guiding Principles on Internal Displacement state that "families which are separated by displacement should be reunited as quickly as possible. All appropriate steps shall be taken to expedite the reunion of such families, particularly when children are involved. The responsible authorities shall

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facilitate inquiries made by family members and encourage and co-operate with the work of humanitarian organisations engaged in the task of family reunification.

Article 22.2 of the CRC echoes the importance of co-operation with UN bodies, intergovernmental organisations and non-governmental organisations, particularly when there is a need to trace family members with a view to reunification.

Family reunification should not be used as a justification for acting against the child's best interest (article 3 of the CRC). For example the family may not want reunification if it might result in the child being exposed to danger if he is returned to the country of origin; or a child may not wish to be reunited with his family for a variety of reasons.

It is essential that separated children are assisted in locating and communicating with their family members. The CRC recognises that the States shall assist any child to trace the parents and other members of the family (article 22.2), as does the African Charter on the Rights and Welfare of the Child, and UNHCR EXCOM Conclusion No. 84 of 1997.

Reference to the ARC Resource Pack on **Voluntary Repatriation** can be made for further information in this regard.

## **TRAINING MATERIALS FOR TOPIC 5**

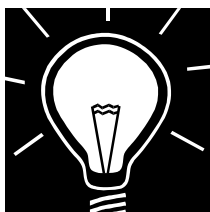
Overhead 5.1: Key Learning Points for Topic 5	Summary of key learning points.
Overhead 5.2: Family Unity and Alternative Care	Extracts from Articles 9, 10 and 20 of the CRC
Exercise 5.1: Detention of Children	Special measures of protection related to the detention of children

## **FURTHER SUGGESTIONS FOR TRAINING**

This topic is dealt with in more detail in the ARC Resource Pack on **Separated Children**.

## International Legal Standards

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### Topic 6

## Education and Health

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### KEY LEARNING POINTS

- ***Education is recognised as a universal human right through a range of legal instruments.***
- ***Apart from its primary sense of informing, education is a vital source of personal and emotional support and has a direct protection function for children in armed conflicts.***
- ***Children have a right to rest and leisure and to engage in play and appropriate recreational activities.***
- ***The right to the highest attainable standard of health for children is established in the CRC***

### EDUCATION

#### **a. The right to education**

For children affected by war and displacement, education is more than acquiring knowledge and skills, it is seen as a vital source of personal and emotional support. Organised and regular activities can help restore structure and purpose in their lives. Education can play a vital part in enabling children to express and discuss experiences of violence, danger, displacement etc., and in so doing develop both individual and shared understanding of the meaning of these events.

Education can also be a means to monitor early-warning signs, as well as the development and progress, of children who may have been traumatised by their experiences, or who are at risk of exploitation, military recruitment, or other undesirable activities. If these children are in school, they are much less likely to be vulnerable to abuse of all kinds, and may be closer to receiving the assistance they need.

In addition, a basic education could give a refugee or displaced child options for a better future.

#### **b. Education in Human Rights Law and Refugee Law**

It is important that anyone involved in the provision of education to refugees and displaced persons is clear about children's **absolute** right to education. Education is recognised as a universal human right:

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- Article 26 of the Universal Declaration of Human Rights;
- Article 13 of the International Covenant on Economic, Social and Cultural Rights;
- Article 28 of the Convention on the Rights of the Child;
- Article 17(1) of the African Charter on Human and People's Rights;
- Article XI of the African Charter on the Rights and Welfare of the Child;
- Article XII of the American Declaration of the Rights and Duties of Man;
- Article 34 of the Arab Charter on Human Rights;
- Article 9 of the Cairo Declaration on Human Rights in Islam; and
- Article 22 (1) of the 1951 Convention Relating to the Status of Refugees.

These instruments should be used in advocacy.

Recall that all children within the jurisdiction of a country - girls, disabled children, refugee and asylum-seeking children included - enjoy all the rights contained in the CRC, including education, without discrimination. Article 28 of the CRC states that education should be made available *"on the basis of equal opportunity"*. States Parties shall make primary education compulsory and available free to all. Higher education must be made accessible to all, on the basis of a State's resource capacity.

Problems regarding the delivery of services, such as education and health, in impoverished, underdeveloped countries were considered by the drafters of the CRC. Thus with regard to economic, social and cultural rights, States must undertake to implement measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

The Committee on the Rights of the Child has commented:

*Article 29 not only adds to the right to education recognized in article 28 a qualitative dimension which reflects the rights and inherent dignity of the child; it also insists upon the need for education to be child-centred, child-friendly and empowering, and it highlights the need for educational processes to be based upon the very principles it enunciates. The education to which every child has a right is one designed to provide the child with life skills, to strengthen the child's capacity to enjoy the full range of human rights and to promote a culture which is infused by appropriate human rights values. The goal is to empower the child by developing his or her skills, learning and other capacities, human dignity, self-esteem and self-confidence. "Education" in this context goes far beyond formal schooling to embrace the broad range of life experiences and learning processes which enable children, individually and collectively, to develop their personalities, talents and abilities and to live a full and satisfying life within society (General Comment no. 1).*

### **c. International Humanitarian Law and Education**

International humanitarian law contains provisions concerning education. For orphaned or unaccompanied children, States shall take the necessary measures to facilitate their education in all circumstances, and their education shall be

entrusted, as far as possible, to persons of similar cultural traditions (article 24, Fourth Geneva Convention on the Protection of Civilians in Times of War, 1949).

Regarding education under military occupation, the occupying power shall facilitate the proper working of all institutions devoted to the care and education of children. Appropriate arrangements shall also be made for the maintenance and education of children who are orphaned or separated from their parents as a result of the war (article 50, Fourth Geneva Convention on the Protection of Civilians in times of war, 1949)

In non-international armed conflict situations, children shall receive an education in keeping with the wishes of their parents, or in the absence of parents, of those responsible for their care (article 4(3)(a), Additional Protocol II Relating to the protection of Non-International armed Conflicts, 1977).

The United Nations Guiding Principles on Internal Displacement states under its principle 23 that “every human being has the right to education”. To give effect to this right for internally displaced persons, the authorities concerned shall ensure that such persons, in particular displaced children, receive education which shall be free and compulsory at the primary level. Education should respect their cultural identity, language and religion. Special efforts should be made to ensure the full and equal participation of women and girls in educational programmes. Education and training facilities shall be made available to internally displaced persons, in particular adolescents and women, whether or not living in camps, as soon as conditions permit.

Finally, it has to be noted that Article 31 of the CRC establishes the right of children to rest and leisure – an important part of any educational programme.

Current UNHCR education policy and recommended practices are outlined in the “Revised (1995) Guidelines for Education Assistance to Refugees”. The Guidelines incorporate policies developed in response to the 1989 Convention on the Rights of the Child, the 1993 UNHCR Policy on Refugee Children, the 1994 UNHCR Refugee Children: Guidelines on Protection and Care and EXCOM Conclusions on Refugee Children. In its Conclusion 84 of 1997, EXCOM called on States to respect and observe rights that are of particular relevance to international refugee protection, especially to safeguarding child and adolescent refugees, including the right of children and adolescents to education.

For a more detailed analysis of the legal standards on Education, please refer to the ARC Resource Pack on **Education Topic 1**.

## **HEALTH**

States Parties recognise the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services. Article 24(1) of the CRC.

Article 24 of the CRC builds on Article 6 stating, “States Parties recognize that every child has the inherent right to life”, and develops the right to life and to survival and development to the maximum extent possible. For example, Article 24(3), “States Parties shall take all effective and appropriate measures with a view

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to abolishing traditional practices prejudicial to the health of children”, was drafted because of particular concern over female genital mutilation, and requires a review of all potentially harmful practices.

The right to health care finds its roots in Article 25 of the UDHR, which includes the right to medical care as part of everyone’s right to “a standard of living adequate for the health and well-being of himself and of his family”, adding that “motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.” The ICCPR recognises the same rights under its Article 12.

As with other economic, social and cultural rights, “State Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realisation of the right recognised in [CRC, article 24]. In this regard, particular account shall be taken of the needs of developing countries.” Assistance from other countries, and international agencies, is therefore important in assisting countries to properly implement this right. This assistance is that much more relevant for the cases of refugee children.

International humanitarian law also provides for ways in which health and welfare needs of children can be met during time of conflict. According to Article 23 paragraph 1 of GC IV, the Parties to the conflict shall permit the free passage of all consignments of essential foodstuffs, clothing and tonics intended for children under fifteen, expectant mothers and maternity cases.

This Article was complemented later by Article 70 paragraph 1 of Protocol 1 which states that children shall be given priority in the distribution of relief consignments. In addition, under Article 14, paragraph 1 of the GC IV, children under fifteen are to be admitted in hospital and safety zones and localities which have been established to protect the most vulnerable from the effects of war. Article 8 of Protocol 1 extends the same protection that is granted to the wounded and sick to new-born babies.

## **TRAINING MATERIALS FOR TOPIC 6**

Overhead 6.1: Key Learning Points for Topic 6	Summary of key learning points.
Overhead 6.2: Education	Article 50 of the Geneva Convention IV.
Overhead 6.3: Article 28 of the CRC	Article 28 of the CRC.
Overhead 6.4: Aims of Education Article 29 of the CRC	Article 29 of the CRC.
Overhead 6.5: Health and Welfare	Article 24 of the CRC.
Exercise 6.1: The Education of Children	Examines the implications of Article 29 of the CRC for the education of refugee or displaced children.

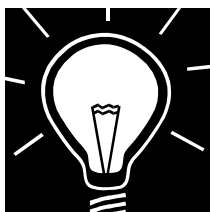


## **FURTHER SUGGESTIONS FOR TRAINING**

If you will be including a specific session on education in your workshop, look through the ARC Resource Pack on **Education** for activities and training materials such as **Education Exercise 1.1: Meeting the Educational Rights of Refugees**. The Briefing Notes for **Education Topic 1** deal in more detail with legal instruments and UNHCR policy on education.

## International Legal Standards

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### Topic 7

## Protection from Abuse and Exploitation

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### KEY LEARNING POINT

- ***Legal provisions exist to protect children and adolescents from harmful employment, sexual exploitation, abuse and violence, as well as against trafficking, sale and abduction.***

### PROTECTION FROM ABUSE AND EXPLOITATION

Refugee and displaced children and adolescents may be at increased risk of abuse and exploitation for a variety of reasons: these may include separation from their families, lack of access to education, and the need to take on adult responsibilities such as caring for siblings; poverty and social inequalities are factors significant in determining child labour, the type and the conditions of labour. In addition, armed conflict may increase the level of risk and vulnerability of children to becoming victims of sexual violence and sexual exploitation.

The Convention on the Rights of the Child accords the child the right to be protected from abuse, neglect and exploitation. Legal provisions exist to protect children and adolescents from employment that is likely to be hazardous or to interfere with their education, or be harmful to their development. Provisions also exist to protect children from sexual violence, exploitation and abuse, as well as against trafficking, sale and abduction.

#### **a) Protection against abuse and neglect**

Article 19 of the Convention on the Rights of the Child accords the child the right to be protected from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child”.

This protection is due without discrimination of any kind. Physical assault against the child constitutes child abuse. It is the duty of governments to protect children against abuse and neglect, including abuse happening within the family, as well as other caring environments. In this sense, punitive corporal punishment, whether in the family or in institutions, is incompatible with the child’s right to physical integrity. In addition, Article 37 protects children against torture or other cruel, inhuman or degrading treatment or punishment. Attention should be accorded to disabled children, who are particularly vulnerable to abuse due to difficulties in communication and placement in institutions.

Traditional practices may need to be reviewed to determine whether they involve any form of physical or mental violence. The CRC requires States to take all effective and appropriate measures to abolish traditional practices that endanger the health of children (article 24. 3).

In all cases of abuse, neglect and exploitation, article 39 of the CRC notes that the State has an obligation to ensure that child victims receive appropriate treatment for their physical and psychological recovery and social reintegration.

#### **b) Protection from child labour**

Article 32.1 of the CRC calls on States parties to recognise the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development. The International Covenant on Economic, Social and Cultural Rights asserts the same principles its article 10(3).

Under Article 33 of the CRC, States Parties shall take all appropriate measures to prevent the use of children in the illicit production and trafficking of narcotic drugs. According to Article 35, States Parties shall take all appropriate measures to prevent the abduction, sale or traffic of children for any purpose or any form.

In refugee law, article 24 of the 1951 Convention Relating to the Status of Refugees, covering adults and children alike, affirms obligations regarding child labour, stating that refugees lawfully staying in the territory shall be accorded the same treatment as is accorded to nationals in respect of the...minimum age of employment...".

The ILO Minimum Age Convention of 1973 (No.138) provides principles which apply to all sectors of economic activity as to minimum age of employment. Ratifying States are to fix a minimum age for admission to employment or work, undertake to pursue a national policy designed to ensure the effective abolition of child labour, and raise progressively the minimum age for admission to employment or work to a level suitable with the fullest physical and mental development of young persons. In November 2000, the ILO Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (No.182) entered into force. It applies to all young persons under the age of 18, and defines, among other things, forced or compulsory recruitment of children for use into armed conflict as one of the worst forms of child labour (article 3).

Staff working on behalf of children must always refer to national laws: it is the responsibility of the government to ensure the safety of children residing within the country. The government is responsible for providing minimum age for admissions to employment, appropriate regulation of the hours and conditions of employment, and provide for appropriate penalties or other sanctions to ensure effective enforcement.

#### **c) Protection from sexual violence, abuse and exploitation**

Article 19 requires States to protect children from all forms of physical or mental violence and specifically mentions exploitation and sexual abuse. Sexual abuse should be understood not only as violent sexual assault but also other sexual activities, including inappropriate touching, where the child does not fully

comprehend, is unable to give informed consent, or for which the child is not developmentally prepared. Sexual exploitation and abuse is addressed in detail in article 34 of the CRC. States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse and particularly to take all appropriate measures to prevent the inducement or coercion of a child to engage in any unlawful sexual activity, including the exploitative use of children in prostitution and in pornographic performances and materials.

Concerns about the widespread practice of sex tourism, the availability of child pornography on the internet, and the increasing international trafficking of children, led to the adoption of an Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography in 2000 to extend the measures that States Parties should undertake in order to guarantee the protection of the child (**see Topic 2**).

Under the ILO Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (No. 182), the term “worst forms of labour” comprises the use, procuring and offering of a child for prostitution or for the production of pornography or for pornographic performances.

In situations of armed conflict, international humanitarian law prohibits sexual violence and protects the civilian population, including children, against sexual violence and abuse (Article 27 of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, article 4 (2) (e) of the 1977 Protocol II relating to the Protection of Victims of Non-International Armed Conflicts).

Specifically, for internally displaced persons, the Guiding Principles on Internal Displacement also offer protection against sexual violence, forced labour of children, degrading treatment and sexual exploitation in its Principle 11.

UNHCR is particularly concerned by the criminal and organised smuggling of migrants that may lead to the misuse of national asylum and immigration procedures. Trafficking of children, mainly for the purpose of abuse and exploitation, is also a special concern and trafficked persons, particularly women and children, may be in need of international protection. In November 2000, the General Assembly adopted the United Nations Convention against Transnational Organized Crime. Two optional protocols were also adopted detailing measures to be taken by countries to combat smuggling of migrants and the trafficking of women and children for sexual exploitation or sweat shop labour. The **Protocol Against the Smuggling of Migrants by Land, Air and Sea** aims to prevent and combat the smuggling of migrants, as well as to promote co-operation among States to this end. Migrants are entitled to the protection of their rights and assistance, and States Parties shall take into account the special needs of women and children (article 16.4). The **Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children** details measures on how countries can improve co-operation on such matters as extradition, mutual legal assistance, transfer of proceedings and joint investigations.

UNHCR has issued a number of policies and guidelines regarding sexual exploitation, abuse and violence: UNHCR Executive Committee Conclusion 73 on Refugee Protection and Sexual Violence of 1993, and Conclusion 84 on Refugee Children and Adolescents of 1997, Refugee Children Guidelines on Protection and

Care (1994), Guidelines on Prevention and Response of Sexual Violence Against Refugees (1995), UNHCR Policy on Harmful Traditional Practices.

## TRAINING MATERIALS FOR TOPIC 7

Overhead 7.1: Key Learning Points for Topic 7	Summary of key learning points.
Overhead 7.1: Protection Measures – Child Labour	Article 32(2) of the CRC.
Overhead 7.2: Protection Measures – Sexual Exploitation	Article 34 of the CRC.
Overhead 7.3: Protection Measures – Rehabilitative Care	Article 39 of the CRC.
Exercise 7.1: The Legal and Policy Framework for Special Protection of Refugee Children	To identify specific legal standards and policies which provide special measures of protection of refugee children.

## FURTHER SUGGESTIONS FOR TRAINING

Ask participants to share their experiences of protecting children from exploitation. What are the most common forms of exploitation they encounter?

Further information on the protection of children against abuse and exploitation, can be found in the ARC Resource Pack on **Abuse and Exploitation**. This Resource Pack has a number of exercises that could be used to explore this topic. For example, **Abuse and Exploitation Exercise 5.1: Discussion Questions – Legal Issues** deals with many of the same concerns as those dealt with here.

## International Legal Standards

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### Topic 8

## Children Affected by Armed Conflict

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### KEY LEARNING POINTS

- *The life experiences of some refugee and displaced children may expose them to a range of risks.*
- *International law emphasises prevention of recruitment, through standards defining the minimum age of recruitment.*
- *Children in armed conflicts are seriously endangered by mines, not only in the times of war, but also a long time after.*

Armed conflicts often cause displacement of populations. Displacement has physical, emotional and psychological impact on children and increases their vulnerability. The personal security of refugee and displaced children is an essential element of international protection. Children are particularly at risk given the violence and uncertainty surrounding both their flight, and their lives in the country/place of asylum. Special protection for refugee and displaced children can include security from a variety of exploitative situations. Some children may experience more than one type of exploitation. The life experiences of some refugee and displaced children may mean that they face a multiplicity of risk.

There are a number of legal standards that can protect children in armed conflicts from various abusive or exploitative situations and preserve their security including protection from military recruitment and protection from landmines.

### PROTECTION FROM MILITARY RECRUITMENT

“Recruitment” is the general term which covers any means, whether compulsory, forced or voluntary, by which persons become part of armed forces or armed groups. International law emphasises the prevention of under-age recruitment, through standards defining the minimum age of recruitment.

International law protects children by banning any recruitment and direct involvement in hostilities of those under 15 years, into any form of armed forces or armed groups in any type of armed conflict, international or non-international (Convention on the Rights of the Child, and 1977 Additional Protocols to the four Geneva Conventions). The Additional Protocols concern not only government armed forces, but also informal armed forces such as militias, civil defence or local defence forces, or opposing armed groups. The Rome Statute of the International Criminal Court makes any recruitment or use in hostilities of children under 15 years an international war crime.

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However, international law has been developing rapidly towards the position that States shall take measures to ensure that no-one under 18 years of age takes direct part in hostilities nor be recruited (African Charter on the Rights and Welfare of the Child article 22; ILO Convention on the Worst Forms of Child Labour, No. 182, articles 2 and 3; Optional Protocol to the CRC on Involvement of Children in Armed Conflicts, article 1).

On 25 May 2000, the United Nations General Assembly adopted by consensus an Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict which raises from 15 to 18 years the age at which direct participation in armed conflict will be permitted and establishes a ban on compulsory recruitment below 18 years.

The Optional Protocol to the CRC, which entered into force in February 2002, also requires States to make a declaration, upon ratification, regarding the age at which national forces will permit voluntary recruitment, as well as the steps that States will take to ensure that such recruitment is never forced or coerced. In addition States are obliged to take all feasible measures to prevent any recruitment and use of under-18s by armed groups, including legal measures to prohibit and to criminalise such practices.

Principle 13 of the Guiding Principles on Internal Displacement states that “in no circumstances shall displaced children be recruited nor be required or permitted to take part in hostilities”.

**Forced recruitment** (such as by means of abduction, threat or use of violence against the individual or against family members) is prohibited for persons of any age, since it violates many human rights provisions (ILO Convention on the Worst Forms of Child Labour, No.182, article 3).

**Compulsory recruitment** of under-18s for use in armed conflict is prohibited by the Optional Protocol to the CRC (article 2), the African Charter (article 22) and, for use in armed conflict, the ILO Convention on the Worst Forms of Child Labour (article 1, 2 and 3).

Concerning **voluntary recruitment** by governments, the Optional Protocol allows an exception in that it does not prohibit voluntary recruitment between the age of 16 and 18 years, but States cannot recruit below the minimum age they declare when they become parties to the Protocol. In addition, stringent safeguards are required regarding proof of age, parental or other legal consent, the truly voluntary nature of the commitment and understanding of the duties involved in the military service (article 3).

## **PROTECTION FROM LANDMINES**

Children in armed conflicts are killed or seriously injured by mines, not only in the times of war, but also a long time after. Mines represent a persistent danger for children and have indiscriminate effects. Working children (in the fields, searching for firewood or herding their animals) and child soldiers, often used to explore known minefields, are especially vulnerable. Mines also obstruct economic development and reconstruction, and inhibit the return of refugees and internally displaced persons.

Eliminating all anti-personnel landmines is a humanitarian imperative. The indiscriminate use of anti-personnel landmines is a flagrant violation of customary law, international human rights law, and international humanitarian law.

Under human rights law, various CRC provisions can be invoked to advocate for the ban of landmines and the protection of children. Article 6 states that every child has the inherent right to life. It requires States Parties to ensure “to the maximum extent possible the survival and development of the child” (see **Topic 2**). Under Article 38 of the Convention, States Parties “undertake to respect and to ensure respect for rules of international law applicable to them in armed conflicts which are relevant to the child. It further requires them “in accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts” and to take “all feasible measures to ensure protection and care of children who are affected by an armed conflict”. The International Covenant on Civil and Political Rights also grants the inherent right to life (Article 6).

Anti-personnel landmines are regulated under international humanitarian law both by existing custom and by treaty. Many legal experts believe that landmines are already an illegal weapon and should be prohibited because they counter two basic principles of humanitarian law. First, the principle of distinction holds that attacks may only be directed against military objectives. Landmines do not distinguish between military and civilian targets. Second, the principle of unnecessary suffering holds that, even if an attack is directed against a legitimate military objective, the attack is not lawful if it can result in excessive injury or suffering to civilians. Thus, the military utility of a weapon must outweigh its impact on civil society, and the long destructive life of a landmine is clearly greater than any immediate utility. These principles apply to all States as part of customary international law.

The use of landmines is specifically regulated by Protocol II of the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which May Be Deemed to be Excessively Injurious or to Have Indiscriminate Effects. Worldwide pressure resulting from the International Campaign to Ban Landmines led to a call for a review conference on the Convention, which took place between September 1995 and May 1996. Protocol II to the 1980 Convention on Certain Conventional Weapons specifically regulates the use and transfer of all landmines, including anti-personnel mines, and also regulates or prohibits similar devices, including mines intended to destroy tanks and other vehicles. As a result of an intergovernmental review process initiated in 1993, Protocol II was amended by the States Parties on 3 May 1996. Protocol II in its amended form entered into force on 3 December 1998.

A major legal development was made on 18 September 1997, at the Diplomatic Conference held in Oslo with the adoption of the Convention on the Prohibition of the Use, Stockpiling, Production, and Transfer of Anti-personnel Mines and on their Destruction (also known as the Ottawa treaty) which entered into force on 1 March 1999. It is the first Convention ever to prohibit, under international humanitarian law, a weapon in widespread use and it has become law more quickly than any previous multilateral arms-related agreement.

States adhering to this treaty must never under any circumstances use, develop, produce, stockpile or transfer anti-personnel mines or help anyone else to do so. They must also destroy existing anti-personnel mines, whether in stockpiles or in



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the ground, within a fixed time period. A small number of these mines may be retained for the sole purpose of developing mine-clearance and destruction techniques and training people in the use of these techniques. Not only are States Parties prohibited from using anti-personnel mines, but those able to do so agree to provide assistance for mine clearance, mine-awareness programmes and the care and rehabilitation of mine victims. Mine-affected States have a right to seek and receive such assistance directly from other Parties to the treaty and through the United Nations, regional or national organisations, components of the International Red Cross and Red Crescent Movement or non-governmental organisations. These co-operative aspects of the Convention should play as great a role as the ban it imposes in providing an effective international response to the suffering caused by these weapons.

### **TRAINING MATERIALS FOR TOPIC 8**

Overhead 8.1: Key Learning Points for Topic 8	Summary of key learning points.
Overhead 8.2: Human Rights Instruments Which can Be Used for the Protection of Children	Summary of key instruments.
Reading 4: Machel, Graça (Expert of the Secretary-general of the United Nations) Briefing Notes on the Final Report A/51/306: The Impact of Armed Conflict on Children	
Reading 5: Summary of The United Nations Study (Machel Report) on The Impact of Armed Conflict on Children	

### **FURTHER SUGGESTIONS FOR TRAINING**

If sessions on **Child Soldiers** and **Landmine Awareness** are not part of your workshop, look through these ARC Resource Packs for further materials.

Photocopy photographs from the Brett and McCallin book 'Children: The Invisible Soldiers'. Ask participants to comment on what they see and how this relates to their experience of working with child soldiers.



## International Legal Standards

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### Sample Programmes

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Different participants are likely to have different learning needs and priorities. We have divided participants into three broad groups: senior managers, sector co-ordinators and field staff.

**Senior managers** are those people who have key responsibility for an NGO's operations in a country or region or a UNHCR Section. They will have overall responsibility for strategy and resource allocation within the organisation's policy framework. Senior managers' needs are likely to be best served through briefings.

**Sector co-ordinators** comprise those people who have responsibility for a particular aspect of their agency's work in a country or region or who have a responsibility for a particular function within an operation, such as for example UNHCR programme, protection or community services officers. Sector co-ordinators are those responsible for translating policy into practice and ensuring that programme budgets reflect the necessary resources to support good practice.

**Field staff** is those people working in the field who are responsible for implementing the programme activities. They often have considerable front-line experience. Field staff may value the opportunity to develop and practise new skills as well as develop their knowledge and understanding.

Training programmes should be designed with the responsibilities and learning needs of these different groups in mind. If possible, participants from different groups should be trained separately but if this is not possible, exercises and input should be selected which will meet the needs of all groups. It may be possible to use different small group exercises to address the needs of each type of participant in a mixed group workshop.

Two types of programme are included in this Resource Pack. The first describes a half day Awareness-Raising Workshop. The programme makes detailed reference to materials from the Resource Pack and describes how a facilitator might use these materials to conduct a session lasting four hours.

The second example is for a full day workshop. It is written in the form of a Session Plan that covers:

- the overall aim of the training session;
- specific learning objectives;
- a description of what will be covered and the sequence to be followed;
- the timing for each part of the session;
- who will take responsibility for the different parts of the programme;

### Action for the Rights of Children (ARC)

- what inputs and exercises will be used;
- what materials (e.g. handouts, overheads, briefing papers, index cards) will be required;
- what equipment (e.g. flipchart, overhead projector, blackboard, video) is needed.

The purpose and development of session plans are described in detail in the **ARC Facilitator's Toolkit**.

Both programmes are intended as guidance examples only. It is very important that the facilitator should think carefully about the group of participants with whom he or she will be working and devise a programme that takes into account:

- the role and responsibilities of the participants;
- the learning needs of the participants;
- their existing level of knowledge;
- their interest in the subject;
- their willingness to share experience and admit to gaps in their knowledge / skills;
- current / local issues and priorities for the participants;
- the amount of time they have available;
- their position in their organisation.

Any training programme should be devised, if possible, in consultation with the intended participants. If it is not possible to consult with all participants (for example, by sending out an application form including questions about their expectations for the training), the facilitator should try to speak to a sample of participants before making final decisions about the programme.

The facilitator should also consider:

- the range of Topics to be covered;
- the order in which Topics should be addressed;
- how to encourage the sharing of experience and information between participants;
- who will carry out the training;
- what methods will be most appropriate for the participants.

More detail on the process of training can be found in the **ARC Facilitator's Toolkit**.

Remember to build in a workshop evaluation - you will find ideas for this in the **ARC Facilitator's Toolkit**.

## **DETAILED PROGRAMME FOR A HALF DAY AWARENESS WORKSHOP**

This programme proposes a session of just under four hours designed to provide participants with an overall awareness of the subject and an introduction to some of the key issues.

### **LEARNING OBJECTIVES**

By the end of this workshop, participants will be able to:

- describe the main international, regional, national legal standards that constitute the broad framework for the protection of refugee and displaced children;
- explain why the Convention on the Rights of the Child offers the highest standard of protection and assistance for refugee and displaced children;
- propose ways in which the child's civil rights and freedoms can be promoted in refugee situations;
- recognise the specific legal standards and policies which provide special measures of protection for refugee.

### **PREPARATION**

The facilitator should prepare an information pack for the participants which may include:

- copies of the relevant Handouts and Briefing Notes;
- a copy of the Reading List and relevant Readings;
- copies of relevant materials from the region / country / locality (e.g. research papers, monitoring reports).

If possible, this pack should be sent to participants in advance.

The facilitator should gather any locally relevant information on the Topics to be addressed in the training and identify individuals with specific expertise who could act as resource persons. All participants can be asked to bring along relevant material to display / share with others. The facilitator could, if possible, devise locally appropriate case-studies.

The facilitator should study the notes for each Exercise carefully to ensure that all the necessary materials are prepared in advance.

## Introduction – International Legal Standards

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10 mins	Introduce the agreed aims of the workshop on International Legal Standards on a prepared flipchart or overhead. Adapt <b>Overhead 1.0: Key Concepts</b> to introduce relevant Key Concepts.	Flipchart summarising aims of workshop. Overhead 1.0
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## The Framework of Legal Standards

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15 mins	Introduce <b>Overhead 1.2: Rights Foundation for Refugee and Displaced Children</b> . Using <b>Briefing Notes for Topic 1</b> with either <b>Overhead 1.3 or 1.4</b> , introduce the elements of international law that constitute the broad framework for the protection of refugee and displaced children.	Briefing Notes for Topic 1 Overhead 1.2 Overhead 1.3 or 1.4
45 mins	Introduce and facilitate <b>Exercise 1.2</b> to illustrate the benefits of adopting a rights-based approach to programming.	Exercise 1.2
10 mins	Using <b>Handout 1.1: Regional Instruments</b> discuss whether relevant instruments operate in the participants' region. Identify and discuss national laws which apply in the participants' countries.	Handout 1.1

## The Convention on the Rights of the Child

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15 mins	Introduce the CRC using the <b>Briefing Notes for Topic 2</b> and <b>Overheads 2.1 and 2.2</b> . Explain why the CRC is important in protecting and assisting refugee and displaced children and detail its guiding principles.	Briefing Notes for Topic 1 Overheads 2.1, 2.2.
30 mins	Introduce and facilitate <b>Exercise 2.2: Categories of the CRC</b> and Overhead 2.4 to emphasise the connections between the activities of our organisations, and the rights that children hold under the CRC.	Overhead 2.4 Exercise 2.2

## Civil Rights and Freedoms

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5 mins	Briefing introduce the topic referring to the Guiding Principles and Article 12 of the CRC: The Child's Opinion; Article 13: Freedom of Expression; Article 14: Freedom of Thought, Conscience and Religion; Article 15: Freedom of Association and Article 16: Protection of Privacy.	
45 mins	Introduce and facilitate <b>Exercise 2.4: Civil Rights and Freedoms</b> . Use this exercise to expose participants more directly to some of the provisions of the CRC.	Exercise 2.4

## Special Measures of Protection

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5 mins	Introduce the main areas where special protection measures are required: protection of children affected by armed conflict; detention of children; protection from exploitation (concentrate on whichever are most relevant to the participants).	
40 mins	Introduce <b>Exercise 1.1: The Legal Framework for Special Protection of Refugee and Displaced Children</b> .	Exercise 1.1

## Summary and Evaluation

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10 mins	Review learning objectives from the workshop and conduct a brief evaluation.	Evaluation forms
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## **TRAINING PLAN FOR A DAY WORKSHOP ON INTERNATIONAL LEGAL STANDARDS / ABUSE AND EXPLOITATION**

This programme has been written in the form of a training plan to demonstrate how materials from more than one Resource Pack can be combined to create a workshop which is customised to the needs of a particular group of participants. It is intended as an example only.

### **OVERALL AIM**

To raise the awareness of participants to the international legal framework and demonstrate how this framework can be applied to the protection of refugee and displaced children from abuse and exploitation.

### **LEARNING OBJECTIVES**

By the end of this workshop, participants will be able to:

- describe the main international, regional, national legal standards that constitute the broad framework for the protection of refugee and displaced children;
- explain why the Convention on the Rights of the Child offers the highest standard of protection and assistance for refugee and displaced children;
- recognise the specific legal standards and policies which provide special measures of protection for refugee and displaced children;
- identify possible risk factors for exploitation within refugee/IDP/returnee communities;
- devise programme responses which either help to prevent exploitation or to promote appropriate responses to it.



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<b>Timing</b>	<b>Content</b>	<b>Methods</b>	<b>Materials</b>	<b>Resources &amp; Equipment</b>	<b>Responsibility</b>
10 mins	<b>Introduction</b>	Short input by facilitator	<ul style="list-style-type: none"> <li>• Overhead 1.0: Key Concepts</li> </ul>	Overhead projector Flipchart and pens	
70 mins	<b>The Framework of Legal Standards</b> <b>Regional instruments</b> <b>Why a rights-based approach?</b> <b>The Mandates of Key Agencies Concerned with Refugee Children</b>	Short input by facilitator	<ul style="list-style-type: none"> <li>• Overhead 1.2: Rights Foundation for Refugees</li> <li>• Overhead 1.3: Framework of International Legal Standards</li> <li>• Handout 1.1: Regional Instruments</li> <li>• Exercise 1.2: Rights Based Approaches</li> <li>• Handout 1.3: Mission Statements of Some of the Key Agencies</li> </ul>	Overhead projector Flipchart and pens UNHCR Guidelines for Protection and Care for Refugee Children	
50 mins	<b>The Convention on the Rights of the Child</b> <b>The UNHCR Policy on Refugee Children</b>	Short input by facilitator Plenary discussion Small group exercise	<ul style="list-style-type: none"> <li>• Overhead 2.2: Why the CRC is Important</li> <li>• Overhead 2.3: Guiding Principles Underlying the CRC</li> <li>• Overhead 2.4: Categories of CRC Rights</li> <li>• Exercise 2.3: The CRC and UNHCR Policy on Refugee Children</li> </ul>	Overhead projector Flipchart and pens Sets of UNHCR Policy Guiding Principles cards Sets of Convention on the Rights of the Child cards	
15 mins	<b>Birth registration</b>	Short input by facilitator Plenary discussion	<ul style="list-style-type: none"> <li>• Overhead 3.2: Birth Registration</li> <li>• Overhead 3.3: Birth Registration Options</li> <li>• Handout 3.1: Birth Registration</li> </ul>	Overhead projector Flipchart and pens	

Action for the Rights of Children (ARC)

60 mins	<b>The Legal Framework for Special Protection of Refugee Children</b>	Short input by facilitator Small group exercise	<ul style="list-style-type: none"> <li>• Exercise 1.1: The Legal Framework for Special Protection of Refugee Children</li> <li>• Sets of International Legal Standards cards</li> </ul>	Overhead projector Flipchart and pens	
45 mins	<b>Forms of exploitation What makes children particularly vulnerable?</b>	Short input by facilitator using A&E Topic 2 Plenary discussion	<ul style="list-style-type: none"> <li>• Abuse and Exploitation Exercise 2.1: Refugee Children Are More at Risk from Abuse Than Other Children: Discussion Question</li> </ul>	Flipchart and pens	
45 mins	<b>The nature of exploitation faced by children</b>	Case exercise Small group exercise Plenary discussion	<ul style="list-style-type: none"> <li>• Abuse and Exploitation Exercise 2.2: Case Study - Brigitta</li> </ul>	Overhead projector Flipchart and pens	
60 mins	<b>Prevention of exploitation General preventive strategies</b>	Guided plenary discussion Small group exercise	<ul style="list-style-type: none"> <li>• Abuse and Exploitation Exercise 6.3: Campaign Planning - Prevention</li> </ul>	Overhead projector Flipchart and pens	
60 mins	<b>Specific areas of exploitation: child labour &amp; sexual exploitation</b>	If appropriate, small groups work on exercises focusing on different types of exploitation	<ul style="list-style-type: none"> <li>• Material from Topic 7 or Topic 8 of Abuse and Exploitation Resource Pack as appropriate.</li> </ul>	Overhead projector Flipchart and pens	
25 mins	<b>Summary, action-planning and workshop evaluation</b>	Short input by facilitator Small group action-planning exercise Evaluation exercise	<ul style="list-style-type: none"> <li>• Evaluation form.</li> </ul>	Overhead projector Flipchart and pens	

## International Legal Standards



### Overheads

1.0	Key Concepts
1.1	Key Learning Points for Topic 1
1.2	Rights Foundation for Refugee and Displaced Children
1.3	Framework of International Legal Standards Affecting Refugee and Displaced Children
1.4	Three Rooms in One House
1.5	Why Choose a Right-Based Approach?
2.1	Key Learning Points for Topic 2
2.2	Why the CRC is Important
2.3	Guiding Principles Underlying the CRC
2.4	Categories of CRC Rights
3.1	Key Learning Points for Topic 3
3.2	How Children Achieve Refugee Status
3.3	Birth Registration (Article 7, CRC)
3.4	Birth Registration Options
4.1	Key Learning Points for Topic 4
4.2	Detention in Conflict Situations
5.1	Key Learning Points for Topic 5
5.2	Family Unity and Alternative Care
6.1	Key Learning Points for Topic 6
6.2	Article 50 of the Geneva Convention IV.
6.3	Article 28 of the CRC
6.4	Article 29 of the CRC
6.5	Article 24 of the CRC
7.1	Key Learning Points for Topic 7
7.2	Protection Measures - Child Labour (Article 32(2) of the CRC)
7.3	Protection Measures - Sexual Exploitation (Article 34 of the CRC)

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7.4	Protection Measures - Rehabilitative Care (Article 39 of the CRC)
8.1	Key Learning Points for Topic 8

## International Legal Standards – Overhead 1.0

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### Key Concepts

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1. The grounds for prioritised action on behalf of children, are well established in international law.
2. The Convention on the Rights of the Child (CRC) provides a comprehensive code of rights for children which offers the highest standards of protection and assistance for minors of any international instrument.
3. The issue of legal status of children is particularly important and has very important implications for ensuring birth registration.
4. As a matter of principle, children should not be detained and there are a number of special measures to protect children from unlawful or arbitrary detention.
5. Refugee and displaced children are particularly at risk from many different types of abuse and exploitation, including child labour and sexual exploitation. Their rights to protection are established through the CRC and other international instruments.
6. The maintenance of family unity and the reunification of families has been established as a priority in international law.
7. Education is recognised as a universal human right which is established through a wide range of international and regional instruments.
8. The CRC establishes the right to the highest attainable standard of health for children.
9. The civil rights and freedoms established under the CRC apply equally to all children, who should be provided with opportunities to express their views in any matter affecting them and encouraged to participate in the activities of the community.
10. The CRC and other instruments provide the right to specific protection for children in situations of armed conflict.

## Key Learning Points for Topic 1

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- The legal basis for prioritised action on behalf of children, is well established in international law.
- International refugee, human rights and humanitarian law, together with regional and national law, constitute the broad framework for the protection of refugee and displaced children.
- Humanitarian workers should rely on this framework in their day-to-day work of protecting refugee and displaced children including adolescents.

Rights Foundation for Refugee and Displaced Children

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- A State has the responsibility of protecting the human rights of all persons within its territory;
- Children share certain protected universal rights with all other people;
- Because of their dependence, vulnerability and development needs, children also have certain additional rights.

# **Framework of International Legal Standards Affecting Refugee and Displaced Children**

## **Human Rights Law**

**(including the 1989 Convention on the  
Rights of the Child)**

**Humanitarian  
Law**



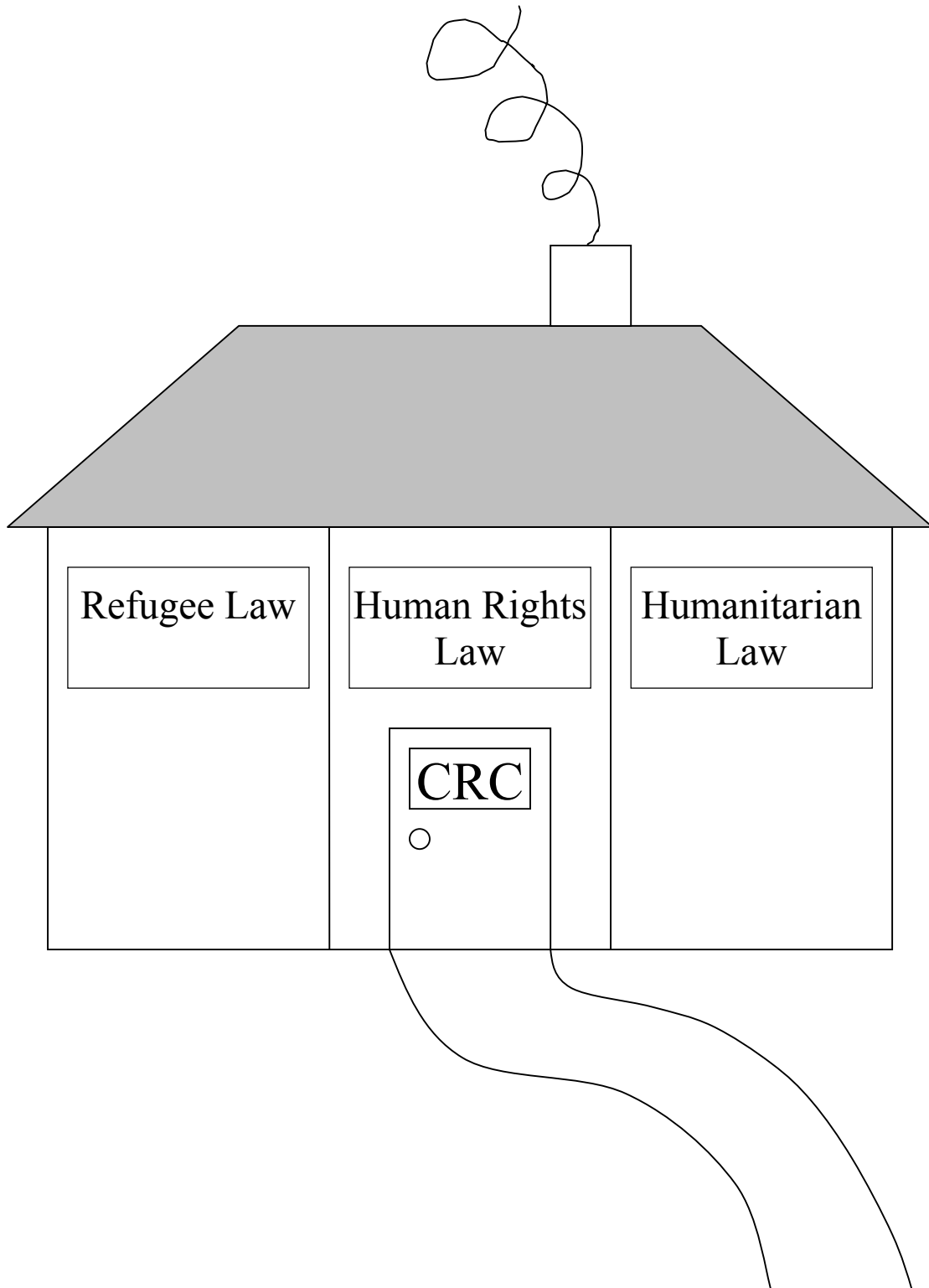
**Refugee Law**

**Regional  
Instruments**



## Three Rooms in One House

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## Why Choose a Right-Based Approach?

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Organisations adopt rights-based approaches to programming for two good reasons: firstly they believe that it is morally right and secondly, because they think it brings a number of benefits to traditional approaches to work.

These benefits include:

- Providing a long term goal to which all work is directed and a set of standards to measure progress towards this goal.
- A goal and standards which are clearly set out in an international legal framework which is shared by governments, donors and civil society.
- Identifying the responsibilities of governments, donors, private sector, communities and individuals to bind them to action – as well as ways in which they can be held accountable.
- Incorporating what is widely regarded as “good development practice” (i.e. a focus on participation, equity, sustainability, non-discrimination, poverty eradication and mutli-sectoral working) into one overall holistic approach.

## Key Learning Points for Topic 2

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- The Convention on the Rights of the Child offers the highest standards of protection and assistance for children of any international instrument.
- The CRC offers potential for the protection of refugee and displaced children because of its near universal acceptance.
- The CRC is based on four guiding principles:
  - non-discrimination;
  - the best interests of the child;
  - the right to life, survival and development;
  - and the right to participation.

## Why the CRC is Important

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1. Comprehensive code of rights for children offering the highest standards of protection and assistance for children under any international instrument.
2. It is applicable to ALL minors within States Parties jurisdiction, including refugee and displaced children.
3. It is a universal treaty - it can be used to protect refugee children even in States which are not party to refugee instruments.
4. There is an international body (the UN Committee on the Rights of the Child) to monitor each State's performance.

## Guiding Principles Underlying the CRC

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- **Non Discrimination**  
(Article 2)
  
- **Best Interests of the Child**  
(Article 3)
  
- **Right to Life, Survival and Development**  
(Article 6)
  
- **Participation**  
(Article 12)

## Categories of CRC Rights

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- **Survival rights**
- **Development rights**
- **Protection rights**
- **Participation rights**

## Key Learning Points for Topic 3

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- Birth registration of a child must be ensured, not only because it is a right in itself, but because it is an essential way of protecting a child's other basic human rights.
- Birth registration can be crucial in confirming nationality and avoiding statelessness.
- In respect to children seeking asylum, there are three main ways for children to obtain refugee status: group determination, determination based on an adult's claim and the child's individual claim.
- Displaced children - those who remain in their national territory - can be among the most vulnerable, and cannot claim special protection such as that accorded to refugees under international refugee law.

## How Children Achieve Refugee Status

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- Group determination
- Determination based on adult's claim
- A child's individual claim



## Birth Registration (Article 7, CRC)

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Article 7 of the CRC states that:

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire nationality and, as far as possible, the right to know and be cared for by his or her parents.
2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

## Birth Registration Options

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- National Registration
- Parallel Mechanisms
- Consulate Registry
- Local Registration

## Remember!

- Birth Certificates
- Legally Validated Copies

## Key Learning Points for Topic 4

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- The detention of children must be a measure of last resort and be for the shortest appropriate period of time.
- International law places a special emphasis on the principle of family unity.
- Where the child is deprived from his/her family environment, the child is entitled to alternative forms of protection, care and assistance.
- Protecting the child is not limited to ensuring his/her rights during his/her stay in the country of asylum, but also involves seeking a durable solution.

## Detention in Conflict Situations

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International humanitarian law emphasises the need for special treatment of minors, in particular avoiding family separations, and protecting family unity.

Any detention, as “a measure of last resort”, must:

- be the exception;
- be in conformity with the State’s law;
- provide a distinction between refugees/asylum-seekers and other aliens, not to mention common criminals;
- have proper justification, and be for the shortest time possible.

## Key Learning Points for Topic 5

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- International law places a special emphasis on the principle of family unity.
- Family reunification, particularly in cases of voluntary repatriation of unaccompanied children, must be a priority.
- Family tracing and reunification for separated children must always be a priority.

## Family Unity and Alternative Care

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### CRC, Article 9

States Parties shall ensure that a child shall not be separated from his or her parents against their will, .....

### CRC, Article 10

...applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with ... in a positive, humane and expeditious manner.

### CRC, Article 20

A child temporarily or permanently deprived of his or her family environment, ... shall be entitled to special protection and assistance by the State.

## Key Learning Points for Topic 6

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- Education is recognised as a universal human right through a range of legal instruments.
- Apart from its primary sense of informing, education is a vital source of personal and emotional support and has a direct protection function for children in armed conflicts.
- Children have a right to rest and leisure and to engage in play and appropriate recreational activities.
- The right to the highest attainable standard of health for children is established in the CRC

## Article 50 of the Geneva Convention IV

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States Parties recognize the right of the child to education. All efforts should be made to:

- ensure that all refugee children have access to primary education, which includes literacy and numeracy at a minimum;
- provide access to other types and levels of education;
- give attention to gender, access, quality, curriculum, relevance, and language;
- promote post-primary education and provide information about relevant opportunities. The content of post-primary education should be linked to the search for durable solutions for the individuals concerned;
- assist authorities, when possible and needed, in complying with this obligation of extending the right to primary education.



Article 28 of the CRC

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States Parties recognize the right of the child to education and ... shall ...

- a) Make primary education compulsory and available to all;
- b) Encourage the development of different forms of secondary education, including general and vocational education, make them accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
- c) Make higher education accessible to all on the basis of capacity by every appropriate means;
- d) Make educational and vocational information and guidance available and accessible to all children;
- e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

## Article 29 of the CRC

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States Parties agree that the education of the child shall be directed to:

- a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
- b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
- c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;
- d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
- e) The development of respect for the natural environment.

Article 24 of the CRC

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1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.
  
2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:
  - a) To diminish infant and child mortality
  
  - b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care.

## Key Learning Points for Topic 7

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Legal provisions exist to protect children and adolescents from harmful employment, sexual violence, exploitation and abuse, as well as against trafficking, sale and abduction.

## Protection Measures - Child Labour (Article 32(2) of the CRC)

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According to Article 32(2) of the CRC, member States are to:

- provide for a minimum age or minimum ages for admission to employment;
- provide for appropriate regulation of the hours and conditions of employment;
- provide for appropriate penalties or other sanctions to ensure the effective enforcement of the right of protection against child labour.

Protection Measures - Sexual Exploitation  
(Article 34 of the CRC)

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States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- the inducement or coercion of a child to engage in any unlawful sexual activity;
- the exploitative use of children in prostitution or other unlawful sexual practices;
- the exploitative use of children in pornographic performances and materials.

Protection Measures - Rehabilitative Care  
(Article 39 of the CRC)

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States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

## Key Learning Points for Topic 8

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- The life experiences of some refugee and displaced children may expose them to a range of risks.
- International law emphasises prevention of recruitment, through standards defining the minimum age of recruitment.
- Children in armed conflicts are seriously endangered by mines, not only in the times of war, but also a long time after.



## International Legal Standards



### Exercises

1.1	The Legal Framework for Special Protection of Refugee and Displaced Children	Senior Managers Sector Co-ordinators Field Staff
1.2	Rights-Based Approaches	Senior Managers Sector Co-ordinators Field Staff
2.1	Using the Convention on the Rights of the Child	Senior Managers Sector Co-ordinators Field Staff
2.2	Categories of the CRC	Senior Managers Sector Co-ordinators Field Staff
2.3	The CRC and UNHCR Policy on Refugee Children	Sector Co-ordinators Field Staff
2.4	Civil Rights and Freedoms	Senior Managers Sector Co-ordinators Field Staff
3.1	Birth Registration	Sector Co-ordinators Field Staff
5.1	Detention of Children	Sector Co-ordinators Field Staff
6.1	The Education of Children	Sector Co-ordinators Field Staff

## International Legal Standards



### Exercise 1.1: (Facilitator's Notes)

## The Legal Framework for Special Protection of Refugee and Displaced Children

### TARGET GROUP

Senior Managers, Sector Co-ordinators, Field Staff.

### OBJECTIVE

By the end of this exercise, participants will be able to:

- describe the specific legal standards and policies which provide special measures of protection for refugee children.

### TIMEFRAME

20 minutes: small group work

20-30 minutes: presentations and discussion

### METHOD

Prepare a poster by joining together four flipchart sheets to create a large-size matrix as follows:

	<b>Children Affected by Armed Conflict</b>	<b>Detention of Children</b>	<b>Protection from Exploitation</b>
<b>Intl. Refugee Law</b>			
<b>Intl. Humanitarian Law</b>			
<b>Intl. Human Rights Law</b>			
<b>Articles of the CRC</b>			
<b>Other Intl. Legal Instruments</b>			
<b>Regional Legal Instruments</b>			
<b>National Law</b>			

### Action for the Rights of Children (ARC)

Using the following pages, prepare three sets of **International Legal Standards cards**.

Divide participants into three groups. Each group is allocated an area of special protection from the following list:

- children affected by armed conflict;
- detention of children;
- protection from exploitation.

Give each participant a copy of the Participants' Notes for this exercise. Give each group a set of **Convention on the Rights of the Child cards** and a set of **International Legal Standards cards**. Provide each group with ten blank cards and a marker pen. Ask each group to answer the questions in their Participants' Notes.

After 20 minutes bring the groups together and ask each group in turn to make their presentation by Blu-Tacking their cards onto the relevant sections of the flipchart poster.

## **RESOURCES**

Copies of **Exercise 1.1: The Legal Framework for Special Protection of Refugee and Displaced Children (Participants' Notes)** for each participant.

A set of **Convention on the Rights of the Child cards** for each group.

A set of **International Legal Standards cards** for each group

Blank index cards and marker pens.

Prepared flipchart poster.

## ***International Legal Standards Cards***

### ***CARD 1***

#### ***Refugee Law: Convention Relating to the Status of Refugees, 1951 and 1967 Protocol Relating to the Status of Refugees***

1951 Convention and the 1967 Protocol relating to the Status of Refugees are applicable to all persons who are refugees as defined in the instruments. All persons clearly includes children and adolescents.

**Article 3** of the 1951 Convention states that “the Contracting States shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin.” Age is taken for granted with respect to the non-discriminatory application of the Articles in the Convention

As a result of having been granted the status of refugee, refugee children benefit from the rights afforded to all refugees as outlined in the various international refugee instruments, and national laws.

### ***CARD 2***

#### ***Refugee Law: Convention Relating to the Status of Refugees, 1951***

**Article 2** on General Obligations states:

“Every refugee has duties to the country in which he finds himself, which require in particular that he conform to its laws and regulations as well as to measures taken for the maintenance of public order.”

### ***CARD 3***

#### ***Refugee Law: Convention Relating to the Status of Refugees, 1951***

**Article 22** on Public Education states:

(1) The Contracting States shall accord to refugees the same treatment as is accorded to nationals with respect to elementary education.

(2) The Contracting States shall accord to refugees treatment as favourable as possible, and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, with respect to education other than elementary education and, in particular, as regards access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships.

**CARD 4**

***Refugee Law: Convention Relating to the Status of Refugees, 1951***

Does not explicitly refer to detention of refugees and asylum-seekers, it nevertheless provides, in its **Article 31**, that refugees should not be detained simply on account of their illegal entry or presence in a State. It adds that “States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularised or they obtain admission into another country.”

**CARD 5**

***International Humanitarian Law: The Geneva Conventions I-IV, 1949***

The four 1949 Geneva Conventions contain a common **Article 3** which obliges all parties to a non-international armed conflict, including dissident armed factions, to respect certain minimum humanitarian rules with regard to persons who are not, or are no longer, taking part in hostilities. Children are included as any other civilian under Article 3.

**CARD 6**

***International Humanitarian Law: Geneva Convention IV, 1949***

**Article 14**, paragraph 1 states:

that children under fifteen are to be admitted in hospital and safety zones and localities which have been established to protect the most vulnerable from the effects of war.

**CARD 7**

***International Humanitarian Law: Geneva Convention IV***

**Article 23** paragraph 1 states:

that the Parties to the conflict shall permit the free passage of all consignments of essential foodstuffs, clothing and tonics intended for children under fifteen, expectant mothers and maternity cases.

**CARD 8**

***International Humanitarian Law: Geneva Convention IV***

**Article 24:**

Refers to the well-being of children under fifteen, who are orphaned or are separated from their families as a result of the war. The parties to the conflict are required to take the necessary measures to ensure that such children are not left to their own resources, and that their maintenance, the exercise of their religion and their education are facilitated in all circumstances. According to this Article, the education of such children is to be entrusted, as far as possible, to persons of a similar cultural tradition.

**CARD 9**

***International Humanitarian Law: Geneva Convention IV, 1949***

**Article 38** paragraph 5 adds that:

while protected civilians should in principle receive the same treatment as aliens in time of peace, children under fifteen years are to benefit by any preferential treatment accorded to the corresponding categories of the native population

## **CARD 10**

### ***International Humanitarian Law: Geneva Convention IV***

#### **Article 50** paragraph states:

The Occupying Power shall, with the co-operation of the national and local authorities, facilitate the proper working of all institutions devoted to the care and education of children.

The Occupying Power shall take all necessary steps to facilitate the identification of children and the registration of their parentage. It may not, in any case, change their personal status, nor enlist them in formations or organisations subordinate to it.

Should the local institutions be inadequate for the purpose, the Occupying Power shall make arrangements for the maintenance and education, if possible by persons of their own nationality, language and religion, of children who are orphaned or separated from their parents as a result of the war and who cannot be adequately cared for by a near relative or friend.

A special section of the Bureau set up in accordance with Article 136 shall be responsible for taking all necessary steps to identify children whose identity is in doubt. Particulars of their parents or other near relatives should always be recorded if available.

The Occupying Power shall not hinder the application of any preferential measures in regard to food, medical care and protection against the effects of war, which may have been adopted prior to the occupation in favour of children under fifteen years, expectant mothers, and mothers of children under seven years.

## **CARD 11**

### ***International Humanitarian Law: Geneva Convention IV***

#### **Article 94** states:

The Detaining Power shall encourage intellectual, educational and recreational pursuits, sports and games amongst internees, whilst leaving them free to take part in them or not. It shall take all practicable measures to ensure the exercise thereof, in particular by providing suitable premises.

All possible facilities shall be granted to internees to continue their studies or to take up new subjects. The education of children and young people shall be ensured; they shall be allowed to attend schools either within the place of internment or outside.

Internees shall be given opportunities for physical exercise, sports and outdoor games. For this purpose, sufficient open spaces shall be set aside in all places of internment. Special playgrounds shall be reserved for children and young people.

**CARD 12**

***International Humanitarian Law: Geneva Convention IV Protocol I***

**Article 8** extends the same protection that is granted to the wounded and sick to new-born babies.

**CARD 13**

***International Humanitarian Law: Geneva Convention IV Protocol I***

**Article 70** paragraph 1 states:

that children shall be given priority in the distribution of relief consignments

**CARD 14**

***International Humanitarian Law: Geneva Convention IV Protocol I***

**Article 77**, paragraph 2:

Is undoubtedly one of the most crucial provisions of International Humanitarian Law, concerns the participation of children in international hostilities and their recruitment into armed forces. Paragraph 2 reads as follows:

“The parties to the conflict shall take all feasible measures in order that children who have not attained the age of fifteen years do not take a direct part in hostilities and, in particular, they shall refrain from recruiting them into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, the Parties to the conflict shall endeavour to give priority to those who are oldest.”

**CARD 15**

***International Humanitarian Law: Geneva Convention IV Protocol II***

**Article 4** states:

“3. Children shall be provided with the care and aid they require, and in particular:

(c) children who have not attained the age of fifteen years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities.”



**CARD 16**

***International Humanitarian Law: Geneva Convention IV Protocol II***

**Article 77**, paragraph 1 states:

Children are to be the object of special respect and shall be protected against any form of indecent assault. The Parties to the conflict are to provide them with the care and aid they require. This protection is understood to be applicable for all children, without exception.

**CARD 17**

***Human Rights Law: Universal Declaration of Human Rights, 1948***

**Article 5** says:

“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”

(Although the UDHR is not a treaty and binding, it provides an authoritative understanding of the human rights guaranteed in the UN Charter, and many national constitutions make reference to it or incorporate its provisions.)

**CARD 18**

***Human Rights Law: The Universal Declaration of Human Rights***

**Article 19** states

“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

## **CARD 19**

### ***Human Rights Law: The Universal Declaration of Human Rights, 1948***

#### **Article 25 states:**

“(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

(2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.”

## **CARD 20**

### ***Human Rights Law: The Universal Declaration of Human Rights, 1948***

#### **Article 26 states:**

(1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

(2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

(3) Parents have a prior right to choose the kind of education that shall be given to their children.”

**CARD 21**

***Human Rights Law: Convention Against Torture (CAT), 1984***

**Article 2 states:**

1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.
2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.
3. An order from a superior officer or a public authority may not be invoked as a justification of torture.

**CARD 22**

***Human Rights Law: Convention Against Torture (CAT), 1984***

**Article 16 states:**

- “1. Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article I, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.
2. The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law which prohibits cruel, inhuman or degrading treatment or punishment or which relates to extradition or expulsion.”

**CARD 23**

***Human Rights Law: International Covenant on Civil and Political Rights, 1966***

**Article 7 states:**

“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.”

## **CARD 24**

### ***Human Rights Law: The International Covenant on Economic, Social and Cultural Rights, 1966***

#### **Article 10 states:**

“Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.”

## **CARD 25**

### ***Human Rights Law: International Covenant on Economic, Social and Cultural Rights, 1966***

#### **Article 13 states:**

1. The States Parties to the present Covenant recognise the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. The States Parties to the present Covenant recognise that, with a view to achieving the full realisation of this right:

(a) Primary education shall be compulsory and available free to all;

(b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;

(c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;

(d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;

(e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

## **CARD 26**

### ***Human Rights Law: International Covenant on Civil and Political Rights, 1966***

#### **Article 19 states:**

“1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

## **CARD 27**

### ***Other International instruments: Supplementary Convention on the Abolition of Slavery, the Slave Trade, and the Institutions and Practices Similar to Slavery, 1956***

Inclusion of child labour under the rubric of slavery may be so warranted in accordance with the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and the Institutions and Practices Similar to Slavery, 1956, **article 1(d)**, defining slavery as “any institution or practice whereby a child or young person under the age of 18 years is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour.

## **CARD 28**

### ***Other International Instruments: The Minimum Age Convention, 1973 (no. 138) of the International Labour Organisation***

This has been upheld by the Committee on the Rights of the Child as an appropriate standard, is also useful for reference as it provides a consolidation of principles which applies to all sectors of economic activity. Under this Convention, the ratifying States are to:

- fix a minimum age for admission to employment or work, and
- undertake to pursue a national policy designed to ensure the effective abolition of child labour;
- raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons.

## **CARD 29**

### ***Other International Instruments: The Declaration and Platform for Action of the Fourth World Conference on Women (Beijing 1995)***

This also highlights the particular discriminatory forms of child labour affecting girls, and should be acknowledged. The Plan of Action cites child labour as one of the reasons why, of the 130 million children who in 1990 had no access to primary education, 81 million were girls.

## International Legal Standards

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### Exercise 1.1: (Participants' Notes)

## The Legal Framework for Special Protection of Refugee and Displaced Children

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### OBJECTIVE

By the end of this exercise, you will be able to:

- describe the specific legal standards and policies which provide special measures of protection for refugee children.

### TIMEFRAME

20 minutes: small group work

20-30 minutes: presentations and discussion

### METHOD

Participants work in three groups. Each group is allocated an area of special protection from the following list:

- children affected by armed conflict;
- detention of children;
- protection from exploitation.

Using a set of **Convention on the Rights of the Child cards** and a set of **International Legal Standards and Policies cards** your group is required to discuss and identify:

- Articles of the CRC.
  - Articles of International Humanitarian Law
  - Other International Legal Instruments
- which are relevant to your allocated area of special protection.

Group members should use their local knowledge to identify any relevant Regional and National law which could be used for the special protection of refugee children under the heading which their group has been allocated. These should be written on blank cards using marker pen.

Action for the Rights of Children (ARC)

After 20 minutes the small groups come together and present their analysis by Blu-Tacking their cards onto the relevant sections of the flipchart poster with the following headings:

	<b>Children Affected by Armed Conflict</b>	<b>Detention of Children</b>	<b>Protection from Exploitation</b>
<b>Intl. Refugee Law</b>			
<b>Intl. Humanitarian Law</b>			
<b>Intl. Human Rights Law</b>			
<b>Articles of the CRC</b>			
<b>Other Intl. Legal Instruments</b>			
<b>Regional Legal Instruments</b>			
<b>National Law</b>			



## International Legal Standards

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### Exercise 1.2: (Facilitator's Notes) Rights-Based Approaches

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#### TARGET GROUP

Senior Managers, Sector Co-ordinators, Field Staff.

#### OBJECTIVE

By the end of this exercise, participants will be able to:

- describe the differences between a rights-based approach and a needs-based approach.

#### TIMEFRAME

20 minutes: small group work

20 minutes plenary discussion

#### METHOD

Divide participants into small groups of 4 or 5. Give each participant a copy of the **Participants' Notes** for this exercise. Ask participants to discuss the table and fill in the blank boxes.

Back in plenary ask participants' to discuss any differences and consider what benefits a rights-based approach to programming may provide. Summarise using Overhead 1.4.

(Please note that this exercise is based on materials taken from the Save the Children Alliance publication Child Rights Programming (2002)).

#### NOTES FOR THE FACILITATOR

What is a Rights-Based Approach?

A rights-based approach to development is often defined by contrasting it with a needs-based approach. They are both based on a desire to help people survive and develop to their full potential. They both seek to identify a range of assistance and actions that are needed to achieve this. Where they differ is in their underlying assumptions and the implications of these assumptions for programming.

The box below lays out the key features of both a needs-based and a rights-based approach. It demonstrates how the approaches can be placed at different ends of the same continuum:

Action for the Rights of Children (ARC)

<b>NEEDS PERSPECTIVE</b>	<b>RIGHTS PERSPECTIVE</b>
Private charity	Public, political, moral and legal responsibility, obligation, duty
Voluntary	Mandatory
Welfare, alms, charity	Legal entitlements, claims, guarantees Justice, equality, freedom
Address symptoms	Address root causes
Partial goals (example: 80% of children are immunised; aim to deliver services to the largest number of people)	Complete goals – all people have the same rights (80% immunisation coverage means the right to immunisation has not been realised)
Hierarchy of needs. Some needs are more important than others (e.g. food before education)	Rights cannot be divided, they are indivisible and interdependent
Needs vary according to the situation, the individual and the environment	Rights are universal (the same everywhere)
Providing welfare services (object of needs)	Empowering (subject of rights). Rights holders (are empowered to) claim their rights
Determination of needs is subjective	Rights are based on international standards
Short-term perspective, filling gaps	Long-term perspective
Service provision	Awareness-raising of all groups (parents, children, decision makers)
Specific projects targeting specific groups of children	Holistic approach
Children deserve help	Children are entitled to help
Governments ought to do something but nobody has definite obligations	Governments have binding legal and moral obligations
Children can participate in order to improve service delivery	Children are active participants by right
Given scarce resources some children may be left out	All children have the same right to fulfil their potential
Each piece of work has its own goal but there is no unifying overall purpose	There is an overarching goal to which all work contributes
Certain groups have the technical expertise	All adults can play a role in achieving children's rights (and children as well)

One of the key differences between these two approaches is that a needs-based approach does not come with accountability. There is no moral or legal obligation on the state and/or other statutory bodies to protect or assist. Many rights have developed from needs, but a rights-based approach adds legal and moral obligations and accountability.

Equally, in a rights-based approach, the holders of the rights are encouraged and empowered to claim their rights. This means that they are not seen as objects of charity (as they are in a needs-based approach) but rather those who are claiming their legal entitlements.

## **WHY CHOOSE A RIGHT-BASED APPROACH?**

Adopting a rights-based approach to development is about having real impact on the way in which organisations and their staff work. It requires organisations to do some new things and to do some other things differently.

Organisations adopt rights-based approaches to programming for two good reasons: firstly they believe that it is morally right and secondly, because they think it brings a number of benefits to traditional approaches to work. These benefits include:

- Providing a long term goal to which all work is directed and a set of standards to measure progress towards this goal.
- A goal and standards which are clearly set out in an international legal framework which is shared by governments, donors and civil society.
- Identifying the responsibilities of governments, donors, private sector, communities and individuals to bind them to action – as well as ways in which they can be held accountable.
- Incorporating what is widely regarded as “good development practice” (i.e. a focus on participation, equity, sustainability, non-discrimination, poverty eradication and mutli-sectoral working) into one overall holistic approach.

## **RESOURCES**

OHP and Overhead 1.4.

Copy of Participants’ Notes for each participant.

Flipchart paper and marker pens.

## International Legal Standards



### Exercise 1.2: (Participants' Notes) Rights-Based Approaches

#### OBJECTIVE

By the end of this exercise, participants will be able to:

- describe the differences between a rights-based approach and a needs-based approach.

#### TIMEFRAME

20 minutes: small group work

20 minutes plenary discussion

#### METHOD

Working in small groups, discuss the table below and fill in the blank boxes.

Back in plenary discuss any differences and consider what benefits a rights-based approach to programming may provide.

(Please note that this exercise is based on materials taken from the Save the Children Alliance publication Child Rights Programming (2002)).

NEEDS PERSPECTIVE	RIGHTS PERSPECTIVE
Private charity	Public, political, moral and legal responsibility, obligation, duty
Voluntary	Mandatory
Address symptoms	
	Rights are universal (the same everywhere)
Determination of needs is subjective	
	Long-term perspective
Specific projects targeting specific groups of children	
Children deserve help	
	Governments have binding legal and moral obligations
Given scarce resources some children may be left out	

## International Legal Standards

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### Exercise 2.1: (Facilitator's Notes)

## Using the Convention on the Rights of the Child

---

### TARGET GROUP

Senior Managers, Sector Co-ordinators, Field Staff.

### OBJECTIVES

By the end of this exercise, participants will be able to:

- describe the concerns they have about the rights of children in the country where you work;
- relate these concerns to the protection of refugee children.

### TIMEFRAME

20 minutes: small group work

20-30 minutes: presentations and discussion

### METHOD

Divide participants into small groups of 4 or 5. Give each participant a copy of the **Participants' Notes** for this exercise. Give each group a set of **Convention on the Rights of the Child cards** and ask them to answer the questions in their Participants' Notes.

Your small group is a group of advocates for refugee children, and you have an opportunity to spend 5 minutes with the United Nations Committee on the Rights of the Child. You seek to take this opportunity to highlight some concerns you have in the country in which you work, as they relate to the protection of refugee children.

- With colleagues who work in your country, together brainstorm on some protection concerns faced by refugee children in the country concerned;
- Identify the relevant Articles in the Convention on the Rights of the Child which are not being properly implemented, resulting in the protection concerns;
- Prepare a five minute presentation for the Committee, outlining the relevant articles, explaining the circumstances surrounding the refugee children, how implementation is not properly being carried out, and what suggestions the Committee could make to the relevant authorities.

Action for the Rights of Children (ARC)

After 20 minutes bring the groups together and ask each group in turn to make their presentation. Summarise the key points using Topic 2 of the 'Notes for Facilitators' as a reference.

**RESOURCES**

Copies of **Exercise 2.1: Using the Convention on the Rights of the Child** for each participant.

A set of Convention on the Rights of the Child cards for each group.

Flipchart paper and marker pens.

Blu Tack or tape.

## International Legal Standards

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### Exercise 2.1: (Participants' Notes)

## Using the Convention on the Rights of the Child

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### **OBJECTIVES**

By the end of this exercise, you will be able to:

- describe the concerns you have about the rights of children in the country where you work;
- relate these concerns to the protection of refugee children.

### **TIMEFRAME**

25 mins in small groups

5 mins presentation

### **METHOD**

Your small group is a group of advocates for refugee children, and you have an opportunity to spend 5 minutes with the United Nations Committee on the Rights of the Child. You seek to take this opportunity to highlight some concerns you have in the country in which you work, as they relate to the protection of refugee children.

- With colleagues who work in your country, together brainstorm on some protection concerns faced by refugee children in the country concerned;
- Identify the relevant Articles in the Convention on the Rights of the Child which are not being properly implemented, resulting in the protection concerns;
- Prepare a five minute presentation for the Committee, outlining the relevant articles, explaining the circumstances surrounding the refugee children, how implementation is not properly being carried out, and what suggestions the Committee could make to the relevant authorities.

Agree one or more members of the group who will make the group's 5-minute presentation in plenary.

## International Legal Standards

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### Exercise 2.2: (Facilitator's Notes) Categories of the CRC

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#### **TARGET GROUP**

Senior Managers, Sector Co-ordinators, Field Staff.

#### **OBJECTIVE**

By the end of this exercise, participants will be able to:

- relate their own activities, and those of their organisations, to rights that children hold under the CRC.

#### **TIMEFRAME**

20 minutes small group work

10 minutes plenary discussion

#### **METHOD**

Divide participants into small groups. Give each group four flipchart papers with one of the following headings on each:

Survival Rights; Protection Rights; Development Rights; Participation Rights.

Ask participants to consider the areas or activities that they and their organisations are involved in and place them under one of the rights categories.

Back in plenary discuss any differences. Summarise by highlighting the significance of the CRC to all aspects of our activities on behalf of refugees and the internally displaced, from food distribution to involvement in decision-making.

Explain that the CRC provides the framework for a set of basic minimum standards for children; a legal framework which can assist those who work on behalf of refugee and displaced populations. In addition to informing ourselves regarding these rights, we should also ensure that colleagues and operational partners have the necessary knowledge skills and attitudes for the activities they carry out.

#### **RESOURCES**

Copy of Participants' Notes for each participant.

Copy of the CRC for each small group.

Flipchart paper and marker pens.



## International Legal Standards

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### Exercise 2.3: (Facilitator's Notes)

## The CRC and UNHCR Policy on Refugee Children

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### TARGET GROUP

Sector Co-ordinators, Field Staff.

### OBJECTIVES

By the end of this exercise, participants will be able to:

- describe the guiding principles of the UNHCR Policy on Refugee Children;
- explain the connections between the CRC and the UNHCR Policy on Refugee Children.

### TIMEFRAME

20 minutes: small groups

20 minutes: presentations and discussion

### METHOD

Divide participants into small groups of 4 or 5. Give each participant a copy of the **Participants' Notes** for this exercise. Give each group a set of the **UNHCR Policy on Refugee Children Guiding Principles cards** and a set of **Convention on the Rights of the Child cards** (see Handout 2.1).

Ask each group to identify which of the CRC cards relate to each of the UNHCR guiding principles cards. They should note their answers on a flipchart. After 20 minutes bring the groups together and ask each group in turn to make their presentation. Summarise the key points using the table below. Participants are likely to have identified considerably more CRC cards which are relevant to the Guiding principles. This is to be encouraged. The table is provided to ensure that the key articles of the CRC are mentioned.

It is important to make the point that the Guiding Principles of the UNHCR Policy on Refugee Children says little about children's participation rights. This establishes an important challenge for those working with refugee children to ensure that their views and opinions are elicited and taken into consideration in decisions which affect the children. The following table identifies suggested links between the two sets of cards.

## Action for the Rights of Children (ARC)

Guiding Principles of the UNHCR Policy on Refugee Children	Suggested Minimum Relevant Articles of the CRC
a) In all actions concerning refugee children, the human rights of the child, in particular his or her best interests, are to be given particular attention.	ALL Articles of the CRC may apply, but particularly: Article 3: Best interests of the child Article 12: The child's opinion
b) Preserving and restoring family unity are of fundamental concern.	Article 9: Separation from parents Article 10: Family reunification
c) Actions to benefit refugee children should be directed primarily at enabling their primary care-givers to fulfil their principal responsibility to meet their children's needs.	Article 5: Parental guidance and the child's evolving capacities Article 18: Parental responsibilities
d) Where the special needs of refugee children can only be met effectively through child-focused activities, these should be carried out with the full participation of their families and communities.	Article 5: Parental guidance and the child's evolving capacities
e) Refugee girls and boys must be assured protection and assistance on a basis of equality.	Article 2: Non-discrimination
f) Unaccompanied refugee children must be the particular focus of protection and care.	Article 20: Protection of children without families
g) UNHCR staff are required to make their best efforts both to prevent risk to refugee children and to take additional action to ensure the survival and safety of refugee children at particular risk.	Article 22: Refugee children Article 38: Armed conflicts Article 39: Rehabilitative care

## RESOURCES

Copies of **Exercise 2.2: The CRC and UNHCR Policy on Refugee Children (Participants' Notes)** for each participant

A set of the **UNHCR Policy on Refugee Children Guiding Principles** cards for each group

A set of **Convention on the Rights of the Child** cards for each group

Flipchart paper and marker pens; Blu Tack or tape.

## International Legal Standards

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### Exercise 2.3: (Participants' Notes)

## The CRC and UNHCR Policy on Refugee Children

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### **OBJECTIVES**

By the end of this exercise, you will be able to:

- describe the guiding principles of the UNHCR Policy on Refugee Children;
- explain the connections between the CRC and the UNHCR Policy on Refugee Children.

### **TIMEFRAME**

20 minutes: small groups

20 minutes: presentations and discussion

### **METHOD**

You are requested to work in small groups of 4 or 5. Each group uses a set of the **UNHCR Policy on Refugee Children Guiding Principles cards** and a set of **Convention on the Rights of the Child cards**.

For each of the UNHCR guiding principles cards, your group should identify which CRC Articles are relevant. For example, for Card A, the most relevant Articles of the CRC may be as follows:

A. In all actions concerning refugee children, the human rights of the child, in particular his or her best interests, are to be given particular attention.

ALL Articles of the CRC may apply, but particularly:

Article 3: Best interests of the child

Article 12: The child's opinion

Answers should be noted on a flipchart.

## UNHCR Guiding Principles

- c. Actions to benefit refugee children should be directed primarily at enabling their primary care-givers to fulfil their principal responsibility to meet their children's needs.

## UNHCR Guiding Principles

- a. In all actions taken concerning refugee children, the human rights of the child, in particular his or her best interests, are to be given primary consideration.

## UNHCR Guiding Principles

- d. Where the special needs of refugee children can only be met effectively through child-focused activities, these should be carried out with the full participation of their families and communities.

## UNHCR Guiding Principles

- b. Preserving and restoring family unity are of fundamental concern.

## **UNHCR Guiding Principles**

- g. UNHCR staff are required to make their best efforts both to prevent risk to refugee children and to take additional action to ensure the survival and safety of refugee children at particular risk.

## **UNHCR Guiding Principles**

- e. Refugee girls and boys must be assured protection and assistance on a basis of equality.

## **UNHCR Guiding Principles**

- f. Unaccompanied refugee children must be the particular focus of protection and care.

## International Legal Standards

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### Exercise 2.4: (Facilitator's Notes) Civil Rights and Freedoms

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#### TARGET GROUP

Senior Managers, Sector Co-ordinators, Field Staff.

#### OBJECTIVES

By the end of this exercise, participants will be able to:

- describe practical ways of implementing those Articles of the CRC which are concerned with the civil-political rights of refugee adolescents.

#### TIMEFRAME

30 minutes: small group discussion

20 minutes: presentations and summary

#### METHOD

Divide participants into small groups of 4 or 5. Give each participant a copy of the **Participants' Notes** for this exercise. Ask the participants to read the text then discuss and carry out the instructions.

***The facilitator should make it clear that the ideas should relate to:***

- ***overall operations for senior managers***
- ***programme design for sector co-ordinators***
- ***practical work for field staff***

In the plenary discussion, address each right in turn and ask each group to provide their answers before moving on to the next right. Summarise ideas on flipchart. Open a discussion about which of the ideas are currently being implemented.

#### RESOURCES

Copies of **Exercise 10.1: Civil Rights and Freedoms (Participants' Notes)** for each participant.

Flipchart paper.

## International Legal Standards



### Exercise 2.4: (Participants' Notes) Civil Rights and Freedoms

#### OBJECTIVE

By the end of this exercise, participants will be able to:

- describe practical ways of implementing those Articles of the CRC which are concerned with the civil-political rights of refugee adolescents.

#### TIMEFRAME

30 minutes: small group discussion

5 minutes: presentation

#### METHOD

These briefing notes list the full text and unofficial summaries of Article 12 to 16 of the UN Convention on the Rights of the Child. Read the text and, as a group, write down three ways in which each right could be applied in order to uphold the Civil - Political rights of refugee adolescents.

Select different group members to report back your ideas to the plenary.

ARTICLE OF THE CRC	HOW THE ARTICLE COULD BE APPLIED
<p><b>Article 12: The child's opinion</b></p> <p><i>(The child's right to express an opinion, and to have that opinion taken into account, in any matter or procedure affecting the child.)</i></p> <p>1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.</p> <p>2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.</p>	<p>1.</p> <p>2.</p> <p>3.</p>

Action for the Rights of Children (ARC)

<p><b>Article 13: Freedom of Expression</b></p> <p>(The child's right to obtain and make known information, and to express his or her views, unless this would violate the rights of others.)</p> <p>1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.</p> <p>2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:</p> <p>(a) For respect of the rights or reputations of others; or</p> <p>(b) For the protection of national security or of public order (ordre public), or of public health or morals.</p>	<p>1.</p> <p>2.</p> <p>3.</p>
<p><b>Article 14: Freedom of thought, conscience and religion</b></p> <p>(The child's right to freedom of thought, conscience and religion, subject to appropriate parental guidance and national law.)</p> <p>1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.</p> <p>2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capabilities of the child.</p> <p>3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.</p>	<p>1.</p> <p>2.</p> <p>3.</p>



Action for the Rights of Children (ARC)

<b>ARTICLE OF THE CRC</b>	<b>HOW THE ARTICLE COULD BE APPLIED.</b>
<p><b>Article 15: Freedom of association</b> (The right of children to meet with others and to join or set up associations, unless the fact of doing so violates the rights of others.)</p> <p>1. States Parties recognise the rights of the child to freedom of association and to freedom of peaceful assembly.</p> <p>2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.</p>	<p>1.</p> <p>2.</p> <p>3.</p>
<p><b>Article 16: Protection of privacy</b> (The right to protection from interference with privacy, family, home and correspondence, and from libel/slander.)</p> <p>1. No child shall be subject to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.</p> <p>2. The child has the right to the protection of the law against such interference or attacks.</p>	<p>1.</p> <p>2.</p> <p>3.</p>

## International Legal Standards

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### Exercise 3.1: (Facilitator's Notes) Birth Registration

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#### TARGET GROUP

Sector Co-ordinators, Field Staff.

#### OBJECTIVES

By the end of this exercise, participants will be able to:

- explain why birth registration is important for refugees;
- describe legal and practical arguments for ensuring birth registration.

#### TIMEFRAME

20 minutes: small groups

20 minutes: presentations and discussion

#### METHOD

Divide participants into small groups of 4 or 5. Give each participant a copy of the **Participants' Notes** for this exercise. Give each group a set of **Convention on the Rights of the Child cards** and ask them to answer the questions on their Participants Notes.

- Why is birth registration important?
- Which articles of the UN Convention on the Rights of the Child are relevant in this case?
- What legal and practical arguments can you use to seek the authorities' co-operation in a program of birth registration?

After 20 minutes bring the groups together and ask each group to present their answers to question 1. When all groups have reported back, move on to question 2 and then finally question 3. Summarise the key points using Overhead 3.2, Handout 3.1 and Topic 3 of the 'Briefing for Facilitators' as a reference.

Question 1: Birth registration is important for the following reasons (not an exhaustive list):

- It is every child's right.
- Values the child as an individual.
- Provides legal status.

### Action for the Rights of Children (ARC)

- Provides proof of name, age and nationality.
- Provides proof of family relationship for inheritance purposes.
- Can be used for planning purposes.
- For voluntary repatriation planning.
- For family tracing / re-uniting
- Proof of age to avoid recruitment as child soldier.
- Prevent discrimination.
- Enables access to social and political rights.
- Important for health monitoring and birth spacing.

Question 2: Articles of the CRC which are *particularly* relevant:

Article 1: Definition of a Child

Article 2: Non-discrimination

Article 7: Name and Nationality

Article 8: Preservation of Identity

Article 10: Family Re-unification

Article 22: Refugee Children

Article 38: Armed Conflicts

Question 3: Legal and practical arguments you can use to seek the authorities' co-operation in a program of birth registration

- It is every child's right under the UN CRC (Article 7) to acquire a nationality.
- Under the International Covenant on Civil and Political Rights (Article 24) every child shall be registered immediately after birth.

Options which can be considered are:

**National Registration** Births of refugee children are registered through the same procedure applicable to nationals.

**Parallel Mechanisms** National authorities establish a parallel and similar system for registering the birth of refugee children.

**Consulate Registry** Where the safety of others would not be put at risk registration with the consular authority of the country of origin can be considered.

**Local Registration** Where States fail to register births of refugee children through any form of national procedures, a local registration system can be used.

**Birth Certificates** Whatever system is used, parents should receive validated birth certificates.

**Legally Validated Copies** Copies of any birth registration should be kept in the UNHCR office.

## **RESOURCES**

Copies of **Exercise 3.1: Birth Registration (Participants' Notes)** for each participant.

A set of **Convention on the Rights of the Child cards** for each group.

Flipchart paper and marker pens.

Blu Tack or tape.

## International Legal Standards

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### Exercise 3.1: (Participants' Notes) Birth Registration

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#### **OBJECTIVES**

By the end of this exercise, you will be able to:

- explain why birth registration is important for refugees;
- describe legal and practical arguments for ensuring birth registration.

#### **TIMEFRAME**

20 minutes: small group work

5 minutes: presentation

#### **METHOD**

Read the scenario and discuss the questions in your small group. Use the set of Convention on the Rights of the Child cards to help you to answer question 2.

#### **SCENARIO**

The births of refugee children in a large camp are not being registered by local authorities in the country of asylum. The authorities point out that births of local children are usually not registered either, unless the parents make a long journey to the provincial capital.

#### **QUESTIONS**

1. Why is birth registration important?
2. Which articles of the UN Convention on the Rights of the Child are relevant in this case?
3. What legal and practical arguments can you use to seek the authorities' co-operation in a programme of birth registration?

Note the answers to the questions on flipchart sheets. Choose group members to report back the answers to each question.

## International Legal Standards

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### Exercise 5.1: (Facilitator's Notes)

#### Detention of Children

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#### **TARGET GROUP**

Sector Co-ordinators; Field Staff.

#### **OBJECTIVE**

By the end of this exercise, you will be able to:

- identify the special measures of protection which relate to the detention of children.

#### **TIMEFRAME**

20 minutes: small group discussion

20 minutes: presentations and summary

#### **METHOD**

Divide participants into small groups of 4 or 5. Give each participant a copy of Exercise LS Ex5.1: Detention of Children (Participant's Notes). Give each group a set of Convention on the Rights of the Child cards and ask them to answer the questions on their briefing sheet.

#### **SCENARIO**

According to the law in Celtland, asylum seekers whose identity is questioned are detained, pending determination of their refugee claim. A family comprising a husband and wife, 12 year old daughter and 16 year old son arrive in Celtland with fake passports and seek refugee status. In accordance with Celtland's immigration and refugee law, they authorities seek to detain the family.

#### **QUESTIONS**

1. Identify the relevant issues as they apply to the detention of children, bringing in an understanding of the best interests of the child.
2. What would you advocate with the authorities so that they conform with international law?

After 20 minutes bring the groups together and ask each group to present their answers to question 1. When all groups have reported back, move on to question 2. Participants should be reminded about the possibility of using a 'check-in'

Action for the Rights of Children (ARC)

system as an alternative to detention. It is most often in the best interest of the child to preserve family unity. If detention is necessary, suitable living quarters should be provided which acknowledge the special needs and rights of children for education and recreational activities. Summarise the key points using Topic 5 of the 'Notes for Facilitators' as a reference.

**RESOURCES**

Copies of Exercise 5.1: Detention of Children (Participant's Notes) for each participant.

Flipchart paper and marker pens.

## International Legal Standards

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### Exercise 5.1: (Participants' Notes)

#### Detention of Children

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#### **OBJECTIVE**

By the end of this exercise, you will be able to:

- identify the special measures of protection which relate to the detention of children.

#### **TIMEFRAME**

20 minutes: small group discussion

5 minutes: presentation

#### **METHOD**

In your small group, read the scenario then discuss and answer the questions. Note your answers on flipchart paper and agree who will present them back to the other participants.

#### **SCENARIO**

According to the law in Celtland, asylum seekers whose identity is questioned are detained, pending determination of their refugee claim. A family comprising a husband and wife, 12 year old daughter and 16 year old son arrive in Celtland with fake passports and seek refugee status. In accordance with Celtland's immigration and refugee law, they authorities seek to detain the family.

#### **QUESTIONS**

1. Identify the relevant issues as they apply to the detention of children, bringing in an understanding of the best interests of the child.
2. What would you advocate with the authorities so that they conform with international law?



## International Legal Standards

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### Exercise 6.1: (Facilitator's Notes)

## The Education of Children

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### TARGET GROUP

Sector Co-ordinators, Field Staff.

### OBJECTIVE

By the end of this exercise, participants will be able to:

- describe the implications of Article 29 of the CRC on the education of refugee children.

### TIMEFRAME

20 minutes: small group discussion

20 minutes: presentations and summary

### METHOD

Divide participants into small groups of 4 or 5. Give each participant a copy of **Participant's Notes** for this exercise. Ask the participants to read the text then discuss and answer the questions. They should note their answers to question one on cards (one to each card) and agree who will present them back to the other participants.

Article 29 of the Convention on the Rights of the Child says: States Parties agree that the education of the child shall be directed to:

- a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
- b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
- c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;
- d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
- e) The development of respect for the natural environment.

## **QUESTIONS**

1. Identify six implications that this Article of the CRC has for the provision of education for refugee or displaced children (one implication to each card).
2. What problems can you foresee in implementing this Article of the CRC and how could you overcome the problems?

After 20 minutes bring the groups together and ask each group to present their answers to question 1. When all groups have reported back, move on to question 2. Summarise the key points using Topic 8 of the Briefing Notes for Facilitators as a reference.

## **RESOURCES**

Copies of **Exercise LS Ex8.1: The Education of Refugee Children (Participant's Notes)** for each participant.

Six index cards and marker pens for each group.

Flipchart paper.

## International Legal Standards

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### Exercise 6.1: (Participant's Notes) The Education of Children

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#### **OBJECTIVE**

By the end of this exercise, participants will be able to:

- describe the implications of Article 29 of the CRC on the education of refugee children.

#### **TIMEFRAME**

20 minutes: small group discussion

5 minutes: presentation

#### **METHOD**

In your small group, read the following text taken from the Convention on the Rights of the Child then discuss and answer the questions. Note your answers to question one on cards (one implication to each card) and your answers to question two on flipchart paper and agree who will present them back to the other participants.

Article 29 of the Convention on the Rights of the Child says: States Parties agree that the education of the child shall be directed to:

- a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
- b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
- c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;
- d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
- e) The development of respect for the natural environment.

#### **QUESTIONS**

1. Identify six implications that this Article of the CRC has for the provision of education for refugee or displaced children.
2. What problems can you foresee in implementing this Article of the CRC and how could you overcome the problems?

## International Legal Standards

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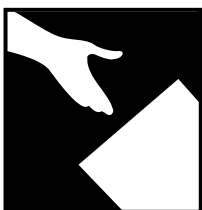
### Handouts

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1.1	Regional Instruments
1.2	Mission Statements of Some of the Key Agencies
2.1	CRC Cards Template
3.1	Birth Registration
3.2	UNHCR's Involvement with IDPs

## International Legal Standards

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### Handout 1.1

### Regional Instruments

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Staff working in the regions should be aware of the provisions of the following regional human rights instruments.

#### **AFRICA**

Under the umbrella of the Organisation of African Unity (OAU), useful human rights instruments that can be referred to include:

- the African Charter on Human and Peoples' Rights (1981) monitored by the African Commission on Human and People's Rights. A Draft Optional Protocol of 1997 created the African Court of Human and Peoples' Rights.
- for children, the African Charter on the Rights and Welfare of the Child (1990)
- for refugee, the Convention Governing the Specific Aspects of Refugee Problems in Africa (1969)

#### **THE AMERICAS**

The Inter-American system under the umbrella of the Organisation of American States (OAS) includes as useful protection tools:

- the American Declaration of the Rights and Duties of Man (1948)
- the American Convention on Human Rights (1978) and its Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (1988), the Inter-American Convention to Prevent and Punish Torture (1987), and the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women (1994). Human rights are promoted and protected by the Inter-American Commission on Human Rights, while the Inter-American Court of Human Rights interprets and implement the Convention on Human Rights.
- for refugees, the Cartagena Declaration on Refugees of 1984 .

## **EUROPE**

The European system under the umbrella of the Council of Europe is composed of:

- a human rights treaty, the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 and its 11 Additional Protocols, a Human Rights Court, and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of 1989
- for children, there is the European Convention on the Exercise of Children's rights, not yet into force.

## **ISLAMIC WORLD AND ARAB STATES**

- For the Islamic world, under the auspices of the Organisation of the Islamic Conference, the Cairo Declaration on Human Rights in Islam of 1990
- the Arab Charter on Human Rights under the auspices of the League of the Arab States was in turn adopted in 1994.

## International Legal Standards

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### Handout 1.2

## Mission Statements of Some of the Key Agencies

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### **United Nations High Commissioner for Refugees (UNHCR)**

UNHCR, the United Nations refugee organization, is mandated by the United Nations to lead and coordinate international action for the world-wide protection of refugees and the resolution of refugee problems.

UNHCR's primary purpose is to safeguard the rights and well-being of refugees. UNHCR strives to ensure that everyone can exercise the right to seek asylum and find safe refuge in another State, and to return home voluntarily.

By assisting refugees to return to their own country or to settle in another country, UNHCR also seeks lasting solutions to their plight.

UNHCR's efforts are mandated by the organization's Statute, and guided by the 1951 United Nations Convention relating to the Status of Refugees and its 1967 Protocol.

International refugee law provides an essential framework of principles for UNHCR's humanitarian activities.

UNHCR's Executive Committee and the UN General Assembly have also authorized the organization's involvement with other groups. These include people who are stateless or whose nationality is disputed and, in certain circumstances, internally displaced persons.

UNHCR seeks to reduce situations of forced displacement by encouraging States and other institutions to create conditions which are conducive to the protection of human rights and the peaceful resolution of disputes. In pursuit of the same objective, UNHCR actively seeks to consolidate the reintegration of returning refugees in their country of origin, thereby averting the recurrence of refugee-producing situations.

UNHCR offers protection and assistance to refugees and others in an impartial manner, on the basis of their need and irrespective of their race, religion, political opinion or gender. In all of its activities, UNHCR pays particular attention to the needs of children and seeks to promote the equal rights of women and girls.

In its efforts to protect refugees and to promote solutions to their problems, UNHCR works in partnership with governments, regional organizations, international and non-governmental organizations.

UNHCR is committed to the principle of participation by consulting refugees on decisions that affect their lives.

By virtue of its activities on behalf of refugees and displaced people, UNHCR also promotes the purposes and principles of the United Nations Charter: maintaining

international peace and security; developing friendly relations among nations; and encouraging respect for human rights and fundamental freedoms.

### **United Nations Children's Fund (UNICEF)**

UNICEF is mandated by the United Nations General Assembly to advocate for the protection of children's rights, to help meet their basic needs and to expand their opportunities to reach their full potential.

UNICEF is guided by the Convention on the Rights of the Child and strives to establish children's rights as enduring ethical principles and international standards of behaviour towards children.

UNICEF insists that the survival, protection and development of children are universal development imperatives that are integral to human progress.

UNICEF mobilises political will and material resources to help countries, particularly developing countries, ensure a "first call for children" and to build their capacity to form appropriate policies and deliver services for children and their families.

UNICEF is committed to ensuring special protection for the most disadvantaged children - victims of war, disasters, extreme poverty, all forms of violence and exploitation and those with disabilities.

UNICEF responds in emergencies to protect the rights of children. In co-ordination with United Nations partners and humanitarian agencies, UNICEF makes its unique facilities for rapid response available to its partners to relieve the suffering of children and those who provide their care.

UNICEF is non-partisan and its co-operation is free of discrimination. In everything it does, the most disadvantaged children and the countries in greatest need have priority.

UNICEF aims, through its country programmes, to promote the equal rights of women and girls and to support their full participation in the political, social, and economic development of their communities.

UNICEF works with all its partners towards the attainment of the sustainable human development goals adopted by the world community and the realisation of the vision of peace and social progress enshrined in the Charter of the United Nations.

### **Office of the United Nations High Commissioner for Human Rights (OHCHR)**

The mission of the Office of the United Nations High Commissioner for Human Rights (OHCHR) is to protect and promote all human rights for all.

OHCHR is guided in its work by the Charter of the United Nations, the Universal Declaration of Human Rights and subsequent human rights instruments, and the 1993 Vienna Declaration and Programme of Action. The promotion of universal ratification and implementation of human rights treaties is at the forefront of OHCHR activities.

OHCHR aims to ensure the practical implementation of universally recognized human rights norms. It is committed to strengthening the United Nations human rights programme and providing the United Nations treaty monitoring bodies and



### Action for the Rights of Children (ARC)

special mechanisms established by the Commission on Human Rights with the highest quality support.

The High Commissioner for Human Rights is the official with principal responsibility for United Nations human rights activities. OHCHR is committed to working with other parts of the United Nations to integrate human rights standards throughout the work of the Organization.

OHCHR bases itself on the principle that human rights are universal, indivisible, interdependent and interrelated. All rights civil, cultural, economic, political and social - should be given equal emphasis, and promoted and protected without any discrimination. The realization and enjoyment of all rights for women and men must be ensured on a basis of equality.

OHCHR is committed to promoting the realization of the right to development and to strengthening a rights-based approach to development.

OHCHR engages in dialogue with governments on human rights issues with a view to enhancing national capacities in the field of human rights and towards improved respect for human rights; it provides advisory services and technical assistance when requested, and encourages governments to pursue the development of effective national institutions and procedures for the protection for human rights.

A number of OHCHR field presences have been established with a view to ensuring that international human rights standards are progressively implemented and realized at country level, both in law and practice. This is to be accomplished through the setting up or strengthening of national human rights capacities and national human rights institutions; the follow up to the recommendations of human rights treaty bodies and the mechanisms of the Commission on Human Rights and the creation of a culture of human rights.

An essential condition for the success of field presences is that governments, national institutions, non-governmental organizations, as well as the United Nations country teams, are increasingly empowered to take on human rights related activities on their own, within the context of regional or sub-regional strategies.

OHCHR seeks to play an active role in removing obstacles and meeting challenges to the full realization of all human rights and in preventing the occurrence or continuation of human rights abuses throughout the world. To achieve this OHCHR will work closely with governments, United Nations bodies, regional organizations, international and non-governmental organizations and civil society.

## **International Save the Children Alliance**

### **Save the Children**

With 30 national organisations and programmes in over 100 countries, Save the Children is the world's leading independent organisation that fights for children's rights. National organisations are involved in both domestic and overseas programmes for and with children - providing practical assistance and bringing about positive change.

### Action for the Rights of Children (ARC)

Today, children continue to go hungry, they are victims of preventable disease, they are abused and exploited, or denied access to education. Save the Children demands recognition of their rights and insists that their views are taken into account.

Half the world's poor are now children. Each year, 12 million children under five die of easily preventable diseases; millions of others are ill because of unsafe drinking water and poor sanitation. Over eight million children have lost their mothers or both parents to AIDS. 130 million children of primary school age are not in school and an estimated 250 million children are now working, often in dangerous and exploitative conditions.

- Save the Children tackles key issues which affect children's rights - health, education, nutrition and food security, gender discrimination, disability and early childhood development. We also have considerable expertise in family tracing and reunification (for children separated by war or natural disaster), the rehabilitation of child ex-combatants, alternatives to institutional care and support for working children.
- Save the Children responds immediately to emergency situations, making sure that children's needs are catered for - that their health is protected, their schooling continued and their families reunited.
- Save the Children plays a critical advocacy role. We do everything we can to bring about positive change. We lobby governments, the international community and members of civil society, highlighting failures in public policy and private practice that violate children's rights.

### **International Committee of the Red Cross (ICRC)**

Source: The ICRC's "Avenir project": Challenges, mission and strategy (12 December 1997).

The ICRC acts on a purely humanitarian basis. Its protection and assistance work is designed to promote implementation of humanitarian law and the universal humanitarian principles, taking into account the legal standards and the specific cultural, ethical and religious features of the environment in which it operates. The ICRC maintains relations with all States and with all parties actually or potentially involved in violence, in order to make them aware of their responsibilities in the humanitarian sphere. As a member of the International Red Cross and Red Crescent Movement - of which it is the founder - the ICRC works to ensure respect for the Fundamental Principles and cooperates primarily with the National Red Cross and Red Crescent Societies and their Federation. It also acts in consultation with all the other humanitarian agencies.

The exclusively humanitarian mission of the ICRC is to protect the lives and dignity of victims of war and internal violence and to forestall the suffering engendered by such situations

- by taking direct action on the level of the victims
- by assuming its role as a neutral and independent institution and intermediary
- by influencing the conduct of all actual and potential perpetrators of such violence through dialogue, the establishment of rules and the dissemination of humanitarian law and of the principles of the Movement.

## International Legal Standards

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### Handout 2.1

## CRC Cards Template

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The following template can be used for the preparation of CRC cards that include unofficial summaries of the main provisions.

### **CRC, Article 1**

#### **Definition of a child**

A child is recognized as a person under 18, unless national laws recognize the age of majority earlier.

### **CRC, Article 2**

#### **Non-discrimination**

All rights apply to all children without exception. It is the State's obligation to protect children from any form of discrimination and to take positive action to promote their rights.

## **CRC, Article 3**

### **Best interests of the child**

All actions concerning the child shall take full account of his or her best interests. The State shall provide the child with adequate care when parents, or others charged with that responsibility, fail to do so.

## **CRC, Article 5**

### **Parental guidance and the child's evolving capacities**

The State must respect the rights and responsibilities of parents and the extended family to provide guidance for the child which is appropriate to her or his evolving capacities.

## **CRC, Article 4**

### **Implementation of rights**

The State must do all it can to implement the rights contained in the Convention.

## **CRC, Article 6**

### **Survival and development**

Every child has the inherent right to life, and the State has an obligation to ensure the child's survival and development.

## **CRC, Article 7**

### **Name and nationality**

The child has the right to a name at birth. The child also has the right to acquire a nationality and, as far as possible, to know his or her parents and be cared for by them.

## **CRC, Article 9**

### **Separation from parents**

The child has a right to live with his or her parents unless this is deemed to be incompatible with the child's interests. The child has also the right to maintain contact with both parents if separated from one or both.

## **CRC, Article 8**

### **Preservation of identity**

The State has an obligation to protect, and if necessary, re-establish basic aspects of the child's identity. This includes name, nationality and family ties.

## **CRC, Article 10**

### **Family reunification**

Children and their parents have the right to leave any country and to enter their own for purposes of reunion or the maintenance of the child-parent relationship.

## **CRC, Article 11**

### **Illicit transfer and non-return**

The State has an obligation to prevent and remedy the kidnapping or retention of children abroad by a parent or third party.

## **CRC, Article 13**

### **Freedom of expression**

The child has the right to express his or her views, obtain information, make ideas or information known, regardless of frontiers.

## **CRC, Article 12**

### **The child's opinion**

The child has the right to express his or her opinion freely and to have that opinion taken into account in any manner or procedure affecting the child.

## **CRC, Article 14**

### **Freedom of thought, conscience and religion**

The State shall respect the child's right to freedom of thought, conscience and religion, subject to appropriate parental guidance.

## **CRC, Article 17**

### **Access to appropriate information**

The State shall ensure the accessibility to children of information and material from a diversity of sources, and it shall encourage the mass media to disseminate information which is of social and cultural benefit to the child, and to take steps to protect him or her from harmful materials.

## **CRC, Article 15**

### **Freedom of association**

Children have a right to meet others, and to join or form associations.

## **CRC, Article 18**

### **Parental responsibilities**

Parents have joint primary responsibility for raising the child, and the State shall support them in this. The State shall provide appropriate assistance to parents in child-raising.

## **CRC, Article 16**

### **Protection of privacy**

Children have the right to protection from interference with privacy, family, home and correspondence, and from libel or slander.

## **CRC, Article 19**

### **Protect from abuse and neglect**

The State shall protect the child from all forms of maltreatment by parents or others responsible for the care of the child and establish appropriate social programmes for the prevention of abuse and the treatment of victims.

## **CRC, Article 21**

### **Adoption**

In countries where adoption is recognized and/or allowed, it shall only be carried out in the best interests of the child, and then only with the authorization of competent authorities, and safe-guards for the child.

## **CRC, Article 20**

### **Protection of a child without family**

The State is obliged to provide special protection for a child deprived of the family environment and to ensure that appropriate alternative family care or institutional placement is available in such cases. Efforts to meet this obligation shall pay due regard to the child's cultural background.

## **CRC, Article 22**

### **Refugee children**

Special protection shall be granted to a refugee child or to a child seeking refugee status. It is the State's obligation to cooperate with competent organizations which provide such protection and assistance.



## **CRC, Article 23**

### **Disabled children**

A disabled child has the right to special care, education and training to help him or her enjoy a full and decent life in dignity and achieve the greatest degree of self-reliance and social integration possible.

## **CRC, Article 25**

### **Periodic review of placement**

A child who is placed by the State for reasons of care, protection or treatment is entitled to have that placement evaluated regularly.

## **CRC, Article 24**

### **Health and health services**

The child has a right to the highest standard of health and medical care attainable. States shall place special emphasis on the provision of primary and preventative health care, public health education and the reduction of infant mortality. They shall encourage international co-operation in this regard and strive to see that no child is deprived of access to effective health services.

## **CRC, Article 26**

### **Social security**

The child has a right to benefit from social security including social insurance.

## **CRC, Article 27**

### **Standard of living**

Every child has the right to a standard of living adequate for his or her physical, mental, spiritual, moral and social development. Parents have the primary responsibility to ensure that the child has an adequate standard of living. The State's duty is to ensure that this responsibility can be fulfilled, and is. State responsibility can include material assistance to parents and their children.

## **CRC, Article 29**

### **Aims of education**

Education shall aim at developing the child's personality, talents and mental and physical abilities to the fullest extent. Education shall prepare the child for an active adult life in a free society and foster respect for the child's parents, his or her own cultural identity, language and values, and for the cultural background and values of others.

## **CRC, Article 28**

### **Education**

The child has a right to education, and the State's duty is to ensure that primary education is free and compulsory, to encourage different forms of secondary education accessible to every child and to make higher education available to all on the basis of capacity. School discipline shall be consistent with the child's rights and dignity. The State shall engage in international co-operation to implement this right.

## **CRC, Article 30**

### **Children of minorities or indigenous populations**

Children of minority communities and indigenous populations have the right to enjoy their own culture and to practise their own religion and language.

## **CRC, Article 31**

### **Leisure, recreation and cultural activities**

The child has the right to leisure, play and participation in cultural and artistic activities.

## **CRC, Article 33**

### **Drug abuse**

Children have the right to protection from the use of narcotic and psychotropic drugs, and from being involved in their production or distribution.

## **CRC, Article 32**

### **Child labour**

The child has the right to be protected from work that threatens his or her health, education or development. The State shall set minimum ages of employment and regulate working conditions.

## **CRC, Article 34**

### **Sexual exploitation**

The State shall protect children from sexual exploitation and abuse, including prostitution and involvement in pornography.

## **CRC, Article 37**

### **Torture and deprivation of liberty**

No child shall be subjected to torture, cruel treatment or punishment, unlawful arrest or deprivation of liberty. Both capital punishment and life imprisonment without the possibility of release are prohibited for offences committed by persons below 18 years. Any child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so. A child who is detained shall have legal and other assistance as well as contact with the family.

## **CRC, Article 35**

### **Sale, trafficking and abduction**

It is the State's obligation to make every effort to prevent the sale, trafficking and abduction of children.

## **CRC, Article 38**

### **Armed conflicts**

States Parties shall take all feasible measures to ensure that children under 15 years of age have no direct part in hostilities. No child below 15 shall be recruited into the armed forces. States shall also ensure the protection and care of children who are affected by armed conflict as described in relevant international law.

## **CRC, Article 36**

### **Other forms of exploitation**

The child has a right to protection from all forms of exploitation prejudicial to any aspects of the child's welfare not covered in articles 32, 33, 34 and 35.

## **CRC, Article 41**

### **Respect for higher standards**

Wherever standards set in applicable national and international law relevant to the rights of the child are higher than those in this Convention, the higher standard shall always apply.

## **CRC, Article 39**

### **Rehabilitative care**

The State has an obligation to ensure that child victims of armed conflicts, torture, neglect, mal-treatment or exploitation receive appropriate treatment for their recovery and social reintegration.

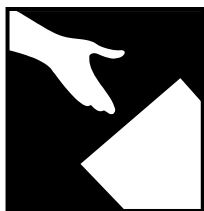
## **CRC, Article 40**

### **Administration of juvenile justice**

A child in conflict with the law has the right to treatment which promotes the child's sense of dignity and who, takes the child's age into account and aims at his or her reintegration into society. The child is entitled to basic guarantees as well as legal or other assistance for his or her defence. Judicial proceedings and institutional placements shall be avoided wherever possible.

## International Legal Standards

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### Handout 3.1

## Birth Registration

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Ensure that the births of all refugee children are registered.

**National Registration** Work closely with authorities of the host government to ensure, if possible, that the births of all refugee children are registered through the same procedure applicable to nationals. This will facilitate record-keeping and tracing.

**Parallel Mechanisms** When there appears to be insurmountable opposition by States to integrate the registration of births of refugees with national children, encourage the national authorities to establish a parallel and similar birth registration system for registering births.

**Consulate Registry** Where it would not entail any risk to the safety of the newborn or his or her family, including members remaining in the country of origin, facilitate registration of the birth with the consular authority of the country of origin present in the country of asylum.

**Local Registration** Where States fail to register the births of refugee children through any form of national procedures, a local registration system to ensure, at a minimum, that the date, place of birth and the names and nationalities of both parents are recorded in a traceable way. Also make sure that the birth is entered into the refugee family's Family Book or other documentation kept by the family.

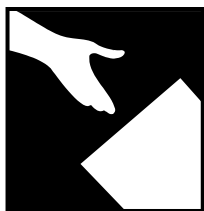
**Birth Certificates** Whatever the system of registration existing, parents should receive validated birth certificates on the birth of each refugee child. Preferably, certificates should be issued by the appropriate national authorities so as to guarantee their legal validity. Local officials should be encouraged to issue them. Where this is not possible, the UNHCR field office should issue a written attestation of the facts of the birth. For example, in the case of Indochinese refugees, midwives and doctors who delivered the babies issued certificates to the parents. The Red Cross and Red Crescent Societies were also involved.

**Legally Validated Copies** Copies of any birth registration documents should be kept in the UNHCR Office. In the case of voluntary repatriation, another set of legally validated copies should be handed over to the relevant authorities of the country of origin.

Source: UNHCR (1994) *Refugee Children: Guidelines on Protection and Care*, Geneva: UNHCR

## International Legal Standards

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### Handout 3.2

## UNHCR's Involvement with IDPs

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General Assembly resolution 48/116 of December 1993 and Executive Committee Conclusion No. 75 indicate the following criteria for UNHCR's involvement with internally displaced persons:

(a) a specific request for UNHCR involvement emanating from the General Assembly, the Secretary-General or another competent principal organ of the United Nations, such as the Economic and Social Council;

(b) the consent of the concerned State or other relevant entity;

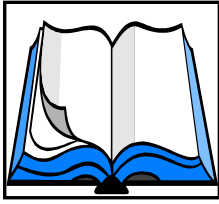
(c) the relevance of UNHCR's expertise and experience to assist, protect, and seek solutions for internally displaced persons in the particular situation;

(d) the need for UNHCR's activities to remain within the limits of the resources placed at its disposal for the activities in question.

UNHCR activities on behalf of the internally displaced must always be tailored to the dual objectives of protection and solutions. The precise nature of UNHCR's activities will depend on the circumstances of each situation (please refer to IOM/FOM of 2 December 1997 on UNHCR's Role with Internally Displaced Persons).

## International Legal Standards

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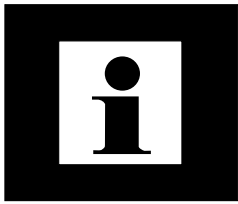
### Further Reading and Web Sites

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## International Legal Standards

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### Further Readings and Websites

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#### **RECOMMENDED READING**

UNHCR (1993). Document EC/SCP/82 UNHCR Policy on Refugee Children

UNHCR (1994). Refugee Children: Guidelines on Protection and Care, Geneva: UNHCR.

UNHCR (1997). Conclusion on Refugee Children and Adolescents No. 84 (XLVIII)

Machel, Graça (Expert of the Secretary-general of the United Nations) (1996). Final Report A/51/306: The United Nations Study on The Impact of Armed Conflict on Children (Machel Report).

United Nations (1998). Guiding Principles on Internal Displacement.

International Save the Children Alliance (2002). Child Rights Programming, London: International Save the Children Alliance

#### **FURTHER READING**

UNHCR (1997). Policy on Harmful Traditional Practices.

UNHCR (1997). Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum.

Save the Children Alliance (1996): "Promoting Psycho-social Well-Being Among Children Affected by Armed Conflict and Displacement: Principles and Approaches". Geneva, SCA - Working Paper No. 1. This is a short and readable publication which provides practical ideas on assisting children affected by war and displacement.

Ali, Shaheen Sardar and Baela Jamil, The United Nations Convention on the Rights of the Child, Islamic Law and Pakistan Legislation: A Comparative Study

Hammarberg, Thomas (1990) Making Reality of the Rights of the Child, Stockholm: International Save the Children Alliance

International Save the Children Alliance (1997). UN Convention on the Rights of the Child: An International Save the Children Alliance training kit, London: International Save the Children Alliance

## **WEBSITES**

### **Office of the High Commissioner for Human Rights**

[www.unhchr.ch](http://www.unhchr.ch)

Provides information on key human rights treaties, including CRC observations through the Committee on the Rights of the Child.

### **International Committee of the Red Cross**

[www.icrc.org](http://www.icrc.org)

The ICRC site is helpful for referencing the humanitarian provisions, commentary and detail of their activities and documents in this area.

### **UNICEF**

[www.unicef.org](http://www.unicef.org)

Provides details of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, along with information on the recently adopted Security Council resolution No. 1314 on children and war.

### **Special Representative of the Secretary-General for Children and Armed Conflict**

[www.un.org/special-rep/children-armed-conflict/fsoldiers.htm](http://www.un.org/special-rep/children-armed-conflict/fsoldiers.htm)

Gives a brief explanation on issues of child soldiers along with a highlight on the Optional Protocol. Also mission reports and documents dealing with children in armed conflicts in general and child soldiers especially.